IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.1077 of 2006

Reserved on: 8 .11.2007

Date of decision 22.11.2007

Khatri Ram and another. Petitioners

Vs.

State of H.P. and others Respondents

Coram:

The Hon'ble Mr. Justice V.K.Gupta, Chief Justice.

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] Yes.

For the Petitioners: Ms.Jyotsna Rewal Dua, Advocate.

For the respondents: Mr.M.S.Chandel, Advocate General, with Mr.J.K.Verma, Deputy Advocate General, for respondents No.1 and 2.

Mr.Bhupender Gupta, Senior Advocate, with Ms.Charu Gupta, Advocate, for respondent No.3.

Mr.Deepak Kaushal, advocate, for respondents No.4 to 329.

Per Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that the petitioners along with other villagers owned and possessed 5679 bighas of village common land i.e. Shamlat Deh assessed to land revenue well within the ceiling as laid down in the Himachal Pradesh Ceiling in Land Holdings Act. The Himachal Pradesh Village common Lands Vesting and Utilization Act, 1974 received the assent of the President of India on 9th August, 1974 and it was

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[1] Whether reporters of local papers are allowed to see the judgment?

placed at Serial No.139 of the 9th Schedule, as per 40th Amendment of the Constitution. As per provision of the Act, 5614.04 bighas of village common land owned by the petitioners with other co-owners assessed to land revenue got vested in the State of Himachal Pradesh. The entry to this effect was carried out in Mutation No.663 dated 9.9.1975.

An amendment was carried out in the Principal Act in the year 1981 vide Act No.18 of 1981, whereby Section 8-A was inserted in the Act. The amendment carried out by way of Act No.18 of 1981 did not receive the assent of the President. The respondent No.3 was sanctioned mining lease on 20th March, 2001 for a period of 30 years for a total area measuring 39.5 bighas. The amendment was carried out by way of Act No.20 of 2001 assented to by the Governor of Himachal Pradesh on 27.9.2001, whereby sub clause (d) was added to sub section 2 of Section 3 retrospectively i.e. from the date of the Himachal Pradesh Village Common Land vesting and Utilization Act No.18 came into force on 29.8.1974. Consequently the land vested in the State was required to be returned to the original owners. The State returned proprietary rights of the Village common land measuring 4276.01 bighas to the owners vide a Mutations No.1145 dated 21.5.2004 and 1157 dated 29.9.2004. A total land measuring 1338.03 bighas inclusive of 39.5 bighas comprised in Khasra Nos. 1926/1886/131/1 and 148/1 over which mining lease was sanctioned in favour of respondent No.3 by the State Government was not returned to the petitioners and co-villagers.

The petitioners have prayed for declaring Section 8-A introduced in Act No.18 of 1974 vide Act of 18 of 1981 unconstitutional with a further prayer that it should be struck down. They have also prayed that the proprietary rights of 1338.03 bighas of erstwhile village Shamlat land be returned to them and the mining lease granted in favour of respondent No.3 be cancelled.

The respondent No.1 has filed reply to the writ petition. The reply of respondent No.1 is vague and the specific averments made in the writ petition

have not been dealt with in the right perspective. The State ought to have filed a detailed reply in view of the fact that the vires of section 8-A have been challenged by the petitioners. The main thrust of respondent No.1 is about the mining lease and other ancillary issues related to lease executed in favour of respondent No.3. The respondent No.2 has filed detailed reply to the writ petition. The respondent No.2 in his reply has justified the insertion of Section 8-A in the Principal Act. The respondent No.2 has taken the stand that in view of the provisions of Section 14 the amendment could be carried out in the Principal Act in the year 1981. It is further averred in the reply that insertion of Section 8-A vide Act No.18 of 1981 is in consonance with the provisions of the Principal Act and the mining lease has been executed in favour of respondent No.3 out of the allotable pool since the land classified is “Gair Mumkin/Nakabil Charand” in the revenue record which was not fit for allotment for agriculture and purposes subservient to agriculture by way of allotment to landless and eligible persons. It is further stated in the reply that the petitioners were not entitled to any compensation and the State could utilize the land for the development purposes. The thrust in the reply is also on the proviso of sub clause (d) of sub-section 2 of section 3 on the basis of which it had been contended that the land which had already been used for development activities could not revert back to the owners. It is further averred in the reply that the petitioners have no right to challenge the constitutional validity of the Principal Act which is protected under the 9th schedule of the Constitution. There is no denial by respondents No.1 and 2 in the reply that section 8-A has not received the presidential assent.

The respondent No.3 has filed a separate reply. The main points urged in the reply filed by respondent No.3 are that he had applied for the mining lease in the year 1982 and the same was granted to him on 1.3.2001 and the mining plan was approved on 9th May, 2001. It is further contended in the reply filed by respondent No.3 that he was contributing to the State exchequer by paying

royalty, taxes, fees and other charges. The bonafide of the petitioners have also been challenged by respondent No.3 in his reply. It is further stated in the reply that the respondent was instrumental in giving employment to 50 persons and had also contributed funds for the development of the area. An Averment has been made in the reply to the effect that on 14.12.2006 a meeting of the right holders of Banor Estate was held in which about 90% of the owners had passed a resolution to the effect that they do not object to the mining operations carried out by respondent No.3.

Respondents No.4 to 329 have also filed a separate reply, it has been primarily contended by them that the mining activities being carried out in the area have benefited them and they have no objection to the grant of lease in favour of respondent No.3. They have also supported the version of respondent No.3 that he had contributed considerable funds for the development of the remote area. They have also justified the insertion of Section 8-A by the state.

Ms. Jyotsna Rewal Dua, Advocate had strongly argued that section 8-A of the H.P. Village Common Lands Vesting and Utilization Act, 1974 is ultra vires the Constitution and is liable to be struck down. She also contended that the H.P. Village Common Lands Vesting and Utilization Act, 1974 is an agrarian piece of legislation and the mining lease granted in favour of respondent No.3 by the respondents No.1 and 2 is against the legislative intent. She then contended that since the Act No.18 of 1981 has not received the Presidential assent the immunity granted to the Principal Act cannot be presumed in favour of the amendment. Ms. Dua further submitted that the petitioners have the necessary locus standi to file and maintain the writ petition on their behalf as well as on behalf of the other co-villagers for the enforcement of their constitutional and legal rights. She also contended that respondents No.4 to 329 neither can waive nor barter away their fundamental rights. Her contention with regard to delay and laches is that there cannot be any delay and laches for the enforcement of fundamental rights and she further buttressed her

submission by submitting that earlier the challenge to the vires of the Act placed in Schedule-IX in view of Waman Rao's case was restricted but the scope of challenge has now been enlarged extensively by the Hon'ble Supreme Court in 2007 (2) SCC 1. Enlarging the scope of her submission based on 2007 (2) SCC 1, she contended that the vires of the act now can be challenged if the same is against the basic structure of the Constitution as well as against the rights enshrined in Part-III of the Constitution, which are treated as the basic structure of the Constitution.

The learned Advocate General submitted that section 8-A has been added by invoking section 14 of the Principal Act to remove the difficulties. His second contention is that mining activities is to be treated as a step towards the development of the State as per section 8-A of the Act.

Mr. Bhupender Gupta, Sr. Advocate had strenuously argued that the present petition on behalf of the petitioners cannot be treated as public interest litigation and the same has been filed with ulterior motive to settle the score with his client. His further contention is that his client had been granted mining lease in the year 2001 though he had submitted application in the year 1982. Mr. Gupta also contended that his client is paying royalty, taxes, fee etc. to the State Exchequer and has also contributed funds for the development of the area and the respondents No.4 to 329 are not against the mining lease granted to his client.

Mr. Deepak Kaushal, Advocate appearing on behalf of respondents No.4 to 329 had adopted the arguments addressed by the learned Advocate General and Mr. Bhupender Gupta, Sr. Advocate and had also taken additional plea that Mines and Minerals (Development and Regulation) Act, 1957 has also been placed in Schedule-IX of the Constitution of India and on that basis he had justified the grant of mining lease in favour of respondent No.3.

In view of the pleadings of the parties as well as on the basis of their extensive arguments, the following questions are formulated for consideration in seriatim:

1) **Whether the petitioners have the necessary locus standi to file and maintain the writ petition on their behalf and on behalf of co-villagers for returning their land on the basis of insertion of clause (d) in sub-section (2) of section (3) of the H.P. Village Common Lands Vesting and Utilization Act, 1974?**
2) **Whether the present writ petition can be termed as public interest litigation in view of the constitutional issues raised for protecting the fundamental rights of the petitioners as well as the rights of co-villagers for the restoration of their land on the basis of amendment carried out in the year 2001, which earlier stood vested in the State in the year 1974?**
3) **Whether the present writ petition suffers from the vice of delay and laches and negligence on the part of the petitioners?**
4) **Whether respondents No.4 to 329 could waive or barter away their fundamental rights after passing of the 2001 Act?**
5) **What is the effect of the amendment carried out by way of Act No. 18 of 1981 in the Principal Act by adding section 8-A?**
6) **Whether the H.P. Village Common Lands Vesting and Utilization Act, 1974 is an agrarian piece of legislation and whether granting lease for mining purposes falls out side the scope of agrarian reform and thus not entitled to the protection of Article 31-A of the Constitution of India?**
7) **Whether the immunity enjoyed by the Principal Act being placed in Schedule-IX can be extended to section 8-A added in the year 1981?**
8) **Whether section 8-A could be inserted in the year 1981 in the Principal Act by invoking section 14 of the Act?**
9) **Whether the Court can read down section 8-A to avoid striking it down, if it is found violative of Articles 14 and 19 of the Constitution of India?**

Since the Court has to go into the entire gamut of the questions raised and formulated by this Court, it will be more congenial at this stage to have a complete view of the legislative history of the Punjab Village Common Lands (Regulation) Acts and H.P. Village Common Lands Vesting and Utilization Act, 1974.

The origin of the concept of the village common land and earlier Legislation.

The entire concept of village common land has been explained in detail by Sir. W.H. Rattigan in Digest of Customary Law (15th Edn.) 1989) as under:

"The land is the true basis of unity in village groupings, supplying the ultimate real bond of union between the members who constitute the aggregate proprietary body generally called the "village community", is a fact which may be verified by the most superficial observer of the organization which underlines those communities in the Punjab. Thus, whatever may be the type to which a particular village may belong, and to whatever extent individualistic notions of property may have superseded the earlier ideas of jointness and common holdings, there will be found still surviving very distinct evidence of the fact that in its origin the village association was bound together by the acquisition of a definite space of land, which, as Sir Henry Maine has so abundantly demonstrated, began at once to become the basis of its capacity instead of kinship, ever more and more vaguely conceived. This evidence is to be found in the reservation within the territorial limits of every village of some portions of the uncultivated waste for purposes of common pasture, for assemblies of the people, for the tethering of the village cattle, and for the possible extension of the village dwellings. Lands so reserved are jealously guarded as the common property of the original body of settlers who founded the village or of their descendants, and occasionally also those who assisted the settlers in clearing the waste and brining it under cultivation are recognized as having a share in these reserved plots. Even in village which have adopted separate ownership separate ownership as to the cultivated area, some such plots are usually reserved as village common, and in *pattidari* villages (see para-137). It is not unusual to find certain portions of the waste reserved for the common use of the proprietors of each patti, and other portions for common village purposes the former is designated *shamilat-patti* and the latter *shamilat-deh*.

As a general rule, only proprietors of the village (*malikan-deh*) as distinguished from proprietors of their own holdings (*malikan-makbuza khud*) are entitled to share in the *shamilat-deh*."

A Division Bench of the Lahore High Court has held in ***Malik Mohammad Sher Khan and others Versus Ghulam Mohammad and others***, 1932 Vol-XIII Indian Law Reports 92 that rules pertaining to village common land originated and had been made applicable principally to those parts of the country where agriculture was the predominant feature of village life and cultivation of land was the main source from which the inhabitants draw their income and the State derives its revenue. Their Lordships have held as under:

> **"It must, however, be borne in mind that these rules originated in, and have been made applicable principally to, those parts of the country where agriculture is the predominant feature of village life and cultivation of land is the main source from which the inhabitants draw their income and the State derives its revenue."**

The Punjab Assembly has enacted the Act called "the Punjab Village Common Lands (Regulation) Act, 1953 to regulate the rights in shamlat-deh and abadi-deh, the Statement of Objects and Reasons for introducing the Bill as published in the Punjab Gazette Extraordinary dated 6th April, 1953 reads thus:

> **"When the villages were originally founded it is believed that the shamlat was really meant for the use of all the inhabitants of the village. At present the position is that all the shamlat is the property of the proprietary body of a village and the rights of non-proprietors are in the shape of grants for certain purposes. Though the non-proprietary classes also presumably settled in villages with txhe founders thereof and have been rendering essential services to the proprietary body in matters relating to farm operations, they do not enjoy equal rights in the shamlat lands and they are not the proprietors of the sites under their houses even in the abadis.**
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> **It seems that in the course of time conditions to the determent of Harijans and other similar non-proprietary classes have come into vogue. They feel their position insecure in so far as enjoyment of essential rights in sites of their residential houses. Discontentment over this matter has been expressed by the members of these classes. Government consider that these conditions should no longer exist. It is with a view to giving these**

classes of residents in villages an opportunity to live with security and self respect that the proposed legislation is being undertaken."

Section 3 of the Punjab Village Common Lands (Regulation) Act, 1953 reads thus:

"3. Vesting of rights in panchayats and in non-proprietors.- Notwithstanding anything to the contrary contained in any other law for the time being in force, and notwithstanding any agreement; instrument, custom or usage or any decree or order of any Court or other authority, all rights, title and interest whatever in the land-

(a) which is included in the Shamlat Deh of any village, shall, on the appointed date, vest in a panchayat having jurisdiction over the village;

(b) which is situated in the Abadi Deh of a village and which is under the house owned by a non-proprietor, shall at the commencement of the Act vest in the said non-proprietor."

The Punjab Village Common Lands (Regulation), 1953 and the Pepsu Village Common Land (Regulation) Act, 1954 were repealed by the Punjab Village Common Lands (Regulation) Act, 1961. The Punjab and Haryana High Court has categorically laid down in AIR 1964 (Punjab) 503 that the Punjab Village Common Lands (Regulation) Act, 1953 was an agrarian piece of legislation. The Hon'ble Supreme Court in AIR 1965 SC 632 and 1985 PLJ 463 had laid down that the Punjab Village Common Lands (Regulation), 1953 is an agrarian piece of legislation. The Hon'ble Supreme Court has explained in ***Gram Panchayat v. Malwinder Singh***, 1987 PLJ 463 the true nature of shamlat-deh as under:

"Prior to the partition of India on August 15, 1947 the Shamlat-deh lands in Punjab were owned by the proprietors of the other lands in the village, "Hasab Rasad Khewat", that is to say, in the same proportion in which they owned the other lands. Therefore, a person who did not own any other land in the village could have no proprietary right or interest in the Shamlat-deh lands. But, though the interest of the proprietors of the other lands, in Shamlat-deh lands, was incidental to their proprietary interest in those other

lands, such interest in the Shamlat was not a mere appendage to their interest in the other lands. Our learned Brother, Chinnappa Reddy, has referred in his judgment to a leading decision of the Lahore High Court, *Rahman v. Sai*, I.L.R. 9 Lahore 501, in which it was held that, if a proprietor alienated his land, the alienee would not acquire any interest in the Shamilat by mere virtue of the alienation. That was but consequential to the well established legal position in Punjab that the Shamlat-deh lands were intended for the common use of all shares."

Legislative History of the Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974

The Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974 (Act No.18 of 1974) hereinafter referred to as the Act for brevity sake was enacted to provide for vesting and utilization of village common land in the State of Himachal Pradesh. The Act was passed by the Legislative Assembly, Himachal Pradesh on 11.4.1974. The Act received the assent of the President of India on 9.8.1974 and thereafter the same was published in Rajpatra, Himachal Pradesh Extra Ordinary dated 29.8.1974 as Act No.18 of 1974.

Before this Court considers the salient features of the Act it will be apt to re-produce the statement of objects and reasons for legislating the same. They read as under:

At present in the areas added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966, the Punjab Village Common Lands (Regulation) Act, 1961 is applicable. Under this Act the shamilat land vests in the Panchayats who in turn, can lease out such land in accordance with the provisions of the Act. It was found from experience that the implementation of the Act was not properly done by the Panchayats in respect of leases. Moreover, with respect to Hilly Areas of Kangra, Shimla, Una and Nalagarh, the leasing out of land was considered against the National Forest Policy. Therefore, the Punjab Village Common Lands (Regulation) (Amendment) Act, 1964 was enacted prohibiting leases in the said areas. Inspite of the said amendment Act things

have not improved. Irregularities continue to be committed by the Panchayats in leasing out the land. It has been, therefore, considered proper to vest the shamilat land in the State Government for its proper management and utilization. In the old areas there is no shamilat law corresponding to that applicable in the new areas. The samilat land in the old areas also is not being properly managed and utilized. It is, therefore, considered expedient to have a uniform policy, by way of enacting a law on the subject, throughout the Pradesh.

The Himachal Pradesh Common Lands Vesting and Utilization Act, 1974 was placed in the 9th schedule at Serial No.139 by the Constitution (Fortieth Amendment) Act, 1976.

Now we have to consider the various Sections of the Act to appreciate the submissions made by the learned counsel for the parties. Sections 3, 4, 5,6, 7 and 8 read thus:

3. <u>Vesting of rights in the State Government</u>:- (1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any decree or order of any court or other authority all rights, title and interest including the contingent interest, if any, of the landowner in the lands in any estate-

(a) vested in a Panchayat under section 4 of the Punjab Village Common Lands (Regulation) Act, 1961 (18 of 1961) as in force in the areas added to Himachal Pradesh under section 5 of the Punjab Re-organization Act, 1966 (31 of 1966) except lands used or reserved for4 the benefit of village community including streets, lanes, playgrounds, schools, drinking wells and ponds within abadi deh or grah deh;

(b) described in the revenue records as shamilat tarat potties, pannas and thola and not used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village in the areas added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966; (31 of 1966) and

(c) described in revenue records as shamilat, shamilat deh, shamilat toraf and potti in the areas comprised in Himachal Pradesh, immediately before first November, 1966;

(2) The provisions of sub-section(1) of this section shall not apply to lands described in clauses (b) and (c) of that sub-section if, before the date of commencement of this Act-

(a) **partition of such lands is made by the individual co-sharers through a process of law by a competent court or authority,**

(b) Transfer of such lands is made by the landowner by way of sale, gift or exchange.

(c) Such land built upon by an inhabitant by raising a residential house or cow-shed.

(3) The State Government shall be liable to pay, and the landowners whose rights have been extinguished under sub-section (1) of this section shall be entitled to receive the amount in lieu thereof at the following rates:-

(i) for the land reserved for grazing and other common purposes under clause (a) of sub-section (1) of section8, five times the annual land revenue including rates and cesses chargeable thereon; and

(ii) for the remaining land, fifteen times the annual land revenue including rates and cesses chargeable thereon:

provided that where the land vested in the state Government under this act is not assessed to land revenue, the same shall be construed to be assessed as on similar land in the estate and if not available in the estate then in the adjoining estate or estates as the case may be.

(4) The amount paid to a Panchayat under section 7 shall be deemed to be the Sabha Fund and shall be utilized for such purposes as are mentioned in section 40 of the Himachal Pradesh Panchayati Raj act, 1968. (19 of 1970).

(5) The Collector may, by order in writing, at any time after the land vested in the State Government, direct the landowners to deliver possession thereof within 10 days from the service of the order to such person as may be specified in the order.

(6) If the landowners refuse or fail without reasonable cause to comply with the order made under sub section (5), the Collector may take possession of the land and may for that purpose use such force as may be necessary.

4. Treatment of leases made by Panchayats:- (1) The Collector shall call for from Panchayats in his district the record of leases, contracts or agreements entered into by the Panchayats in respect of any land vested in the Panchayats under the Punjab Village Common Lands (Regulation) Act, 1961, (18 of 1961) and the rules made thereunder and examine such record himself as to the legality or propriety of such leases, contracts or agreements.

(2) Where an examination of the record under sub-section(1) and after making such enquiry as he deems fit, the Collector is satisfied that such leases, contracts or agreements are in accordance with the provisions of the said Act and rules, he shall pass orders declaring such leases , contracts or agreements having been made on behalf of the State Government;

(3) Where on such examination and enquiry the Collector finds that a lease, contract or agreement has been entered into in contravention of any of the provisions of the said act or the rules made thereunder or has been entered into as a result of fraud or concealment of facts or is detrimental to the interest of the estate right holders, he shall conceal such a lease, contract or agreement and such person shall be liable to ejectment under the provisions of section 150 of the Punjab Land Revenue Act, 1887. (17 of 1887)

Provided that no order under sub sections (2) and(3) of this section shall be passed by the Collector without affording an opportunity of being heard to the parties to the lease, contract or agreement.

5. Treatment of amount payable to landowners: - Where land vested in the State Government has been encroached upon by any person before or after the commencement of this act, the revenue Officer may of his own motion eject such person in accordance with the provisions of section 150 of the Punjab Land Revenue

Act,1887 (17 of 1887), or section 163 of the Himachal Pradesh Land Revenue Act, 1954 (17 of 1887) as the case may be.

6. Determination of amount payable to landowners:- (1) The Collector shall cause a notice to be served in the prescribed form and manner, to the landowner, whose rights have been extinguished under sub-section (1) of section 3, stating therein the area of land vested in the State Government and the amount proposed therefore, immediately after the commencement of this Act, calling upon him to prefer objections, if any, within 60 days from the receipt of the notice:

Provided that the Collector may entertain the objections after the expiry of the said period of 60 days if he is satisfied that the landowner was prevented by sufficient cause from filing the objections within the prescribed time.

(2) The Collector after giving the landowner or landowners, as the case may be, an opportunity of being heard and making such enquiry as may be necessary, shall make an award determining the amount payable by the State Government to the landowners in accordance with the provisions of sub-section (3) of section 3 and also apportion the amount thereof among the landowners.

(3) Where the amount is payable to a minor, the Collector may make such arrangements as may be equitable having regard to the interest of the minor.

7. Payment of amount:- The amount payable to a landowner under section 6 shall be paid in the manner and in such number of six monthly instalments not exceeding ten as may be prescribed.

8. Utilization of land vested in the State Government:- (1) All lands vested in the State Government under this Act shall be utilized for the following purposes:

(a) an area not less than fifty per cent of the total area vested in the State Government under section 3 of this Act for grazing and other common purposes of the inhabitants of an estate; and

(b) The remaining land:--

(i) for allotment to a landless person or any other eligible

person; or

(ii) for allotment of site to a handicapped or landless person for the construction of a house;

under a scheme to be framed by the State Government by notification in the official Gazette and the allottee shall pay an amount at the rate of forty-eight times of the land revenue and rates and cesses chargeable on the land allotted to him under the said scheme, either in lump sum or in six monthly instalments not exceeding four."

(2) the land reserved under clause (a) of sub-section (1) of this section shall be demarcated by such Revenue Officer and in such manner as may be prescribed.

(3) Any scheme framed by the State Government under clause (b) of sub-section (1) of this section may provide for the terms and conditions on which the land is to be allotted.

(4) The State Government may, by notification in the Official Gazette, add to, amend, vary or revoke any scheme made under this section.

The amendments were carried out in the Act by the Act called the Himachal Pradesh Village Common Lands Vesting and Utilisation (Amendment) Act, 1981. The amendment carried out has come into force with effect from Ist January, 1979. By way of the Amendment Act 1981, new section 8-A was inserted, namely:

8-A. Utilisation of land for development of the State:- Notwithstanding anything contained in Section 8 of the Act, the State Government may utilize any area of the land vested in it under the Act by lease to any person or by transfer to any Department of the Government in the interests of the development of the State, if the State Government is satisfied that there are sufficient reasons to do so subject to the condition that land for the purposes mentioned in clause (a) of sub-section (1) of section 8 in no case shall be less than fifty per cent of the land vested in the Government under the Act.

Provided that when land is not used by a person for the purpose for which it has been leased, the lease shall stand terminated free from all encumbrances and the Government shall re-enter on the demised premises and lease money, "if paid to the Government, shall be forfeited and no person shall be entitled to any compensation for any improvement made and for any building constructed thereon."

The statement of objects and reasons for introducing the Himachal Pradesh Village Common Lands Vesting and Utilisation (Amendment) Act, 1981 reads thus:

Section 8 of the Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974 (Act No.18 of 1974) provides that all lands vested in the State Government under section 3 of the Act, shall be utilized only for two purposes, viz. (i) an area not less than 50% of the total area vested in the State Government for grazing and other common purposes of the inhabitants of the estate concerned; and (ii) the remaining and for allotment to landless persons. The land vested under section 3 of the said Act, also comprises such land which is not suitable for either of the purposes mentioned in section 8 of the Act, but can be more profitably be utilized for the development of tourism and industrial purposes. In the public interest and to explore the possibilities of the development of the tourism and industrial activities, it had been decided to make amendment in the act immediately. Since the Legislative Assembly was not in session and the circumstances existed which rendered it necessary for the Governor to take immediate action by promulgating an Ordinance under Article 213(1) of the Constitution of India, the Himachal Pradesh Village Common Lands Vesting and Utilization (Amendment) Ordinance, 1981 (Ordinance No.3 of 1981) was promulgated by the Governor on the 15th June, 1981. Now this Ordinance is required to be replaced by a regular legislation.

The Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974 was further amended by the Act called the Himachal Pradesh Village

Common Lands Vesting and Utilization (Amendment) Act, 1987. Sections 2, 3 and 4 of the said Act reads :

"2. In section 2 of the Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974 (hereinafter called the principal Act).-

(i) after the existing clause (a), the following clauses (aa) and (aaa) shall be inserted, namely:--

(aa) "handicapped person" means a crippled or physically or medically deficient person whose annual income from all sources does not exceed rupees seven thousand and five hundred and who, on account of injury, disease or congenital deformity, is substantially prevented from or is incapable of leading a normal life or earning full wages for the work in which he is employed; or obtaining or keeping employment or undertaking work on his own of a kind in view of that injury, disease or deformity which work would have suited his age, experience and qualifications.

Explanation.—For the purposes of this clause, a person who has incurred physical disablement to the extent of fifty per cent or more shall be deemed to be substantially incapable or disabled person",

(aaa) "houseless person" means a person who owns no house or a site to construct a house for himself:

Provided that a person whose father is alive or whose annual income from all sources exceeds Rs.3,000/- shall not be deemed to be a houseless person;"

(ii) for the sign " " occurring at the end of clause (c), the sign " " shall be substituted and thereafter the following proviso shall be added, namely:--

"provided that a person whose father is alive or whose annual income from all sources exceeds Rs.3000/- shall not be deemed to be a landless person;" and

(iii) after the existing clause (d), the following clause (dd) shall be added,-

"(dd)"other eligible person" means a person.-

(i) who, holding land for agricultural purposes less than an area whether as an owner or a tenant, earns his livelihood principally by manual labour on land and intends to take the profession of agriculture and is capable of cultivating the land personally;

(ii) whose father is not alive; and

(iii) whose annual income from all sources does not exceed Rs.3000/-;

and shall not include a person who holds a share or a portion of an estate jointly owned or cultivated by two or more persons."

3. For clause (b) of sub-section (1) of section 8, the following clause (b) shall be substituted, namely:-

"(b) the remaining land—

(i) for allotment to a landless person or any other eligible person; or

(ii) for allotment of site to a handicapped or houseless person for the construction of a house;

under a scheme to be framed by the State Government by notification in the Official Gazette and the allottee shall pay an amount at the rate of forty-eight times of the land revenue and rtes and cesses chargeable on the land allotted to him under the said scheme, either in lump sum or in six monthly instalments not exceeding four."

1. Where any allotment of land made under any scheme, framed under the principal Act, is found to be inconsistent with the provisions made in the principal Act, as amended by sections 2 and 3 of this Act, then notwithstanding anything to the contrary contained in any judgment, decree or order of any court, or any other law for the time being in force, it shall be lawful for an officer especially empowered by the State Government for this purpose, to cancel such allotment and take possession of the land so allotted:

Provided that no order under this section shall be passed without affording an opportunity of being heard to the allottee of the land in question."

The statement of objects and reasons for bringing out the 1987 Amendment Act reads thus:

In 1975, a massive programme of allotment of and was launched by the Government under the 20-Point Programme enunciated by the Prime Minister. Under this programme, all the landless agricultural labourers who had no land or had land less than an acre, were to be allotted land upto an acre. The latter category was called "other eligible persons".

Among the sources from which land was and is being allotted to both the categories, is the village common land vested in the Government under the Himachal Pradesh Village Common Lands Vesting and Utilisation Act, 1974.

The definition of the expression "landless person" as given in that Act at present, was supplemented by instructions issued in October, 1975 laying down that a person having his father alive and income exceeding Rs.3,000/- per annum from all sources shall not be a landless person for the purposes of allotment of land.

The allotment of land has been made in the light of these guidelines and allotments found to have been made in violation of these administrative instructions had been cancelled by the competent authority.

This arrangement has, however, not found favour with the Civil Courts which have held that the definition of the expression "landless person" as given in the Act does not embody the conditions prescribed under the administrative instructions. It has, therefore, become necessary to amend the above definition and make consequential provisions to cancel the allotment of lands obtained by certain unscrupulous persons by concealing facts at the relevant time.

Besides, the State Government has also decided that a handicapped person having 50% or more disability should be granted house-site for construction of his house. Then there may be other purposes also for which land is often required. At present there is no enabling provision in the Act on this score. Section 8 has, therefore, to be amended suitably.

This Bill seeks to achieve the aforesaid objectives."

The Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974. was further amended by the Act called the Himachal Pradesh Village Common Lands Vesting and Utilization (Amendment) Act, 2001. Sections 2 to 9 reads thus:

2. Amendment of Section 2—In Section 2 of the Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974 (18 of 1974) (hereinafter referred to as "the principal Act").-

(a) after clause (20, the following shall be added, namely:- -

"(a-1) "Common purposes" means and includes grazing, collection of fuel wood and tree leaves for fodder, school buildings, Panchayat Ghars,Mahila Mandal Bhawans, School Playgrounds, Community Halls, Janj Ghars, Dispensaries, Government Offices, Kisan Mandlies, tree plantation under various State Government Schemes and any other public facilities";

(b) in clause (aa), for the words "rupees seven thousand and five hundred", the words and sign "the limit fixed for persons living below poverty line as notified by the State Government from time to time," shall be substituted; and

(c) in provisos below clauses (aaa) and (c) and in sub-clause (iii) of clause (dd), for the word, sign and figure "Rs.3,000/-", the words and sign "the limit fixed for persons living below poverty line as notified by the State Government from time to time," shall be substituted.

3. Amendment of Section 3,-- In Section 3 of the principal Act.-

(a) In sub-section (1), for clauses (b) and (c), the following shall be substituted, namely:-

"(b) described in therevenue records as shamlat taraf, patties, pannas, thola, shamlat, shamlat deh, shamlat chak, shamlat tika or by any such other description and not used according to revenue records for the benefit of the community in the village or a part thereof or for common purposes of the village in the areas added to Himachal Pradesh under Section 5 of the Punjab Re-organization Act, 1966 (3) of 1966); and

(c) described in revenue records as shamlat, shamlat deh, shamlat taraf, shamlat chak, patti or by any other such description in the areas comprised in Himachal Pradesh immediately before Ist November, 1966";

(b) in sub-section (s), after clause (c), the following shall be added, namely:-

"(d) land recorded as "shamlat tika Hasab Rasad Malguzari" or by any such other name in the ownership column of jamabandi and assessed to land revenue and has been continuously recorded in cultivating possession of the co-sharers so recorded before 26th January, 1950 to the extent of their shares therein;

Provided that the provisions of this clause shall not be applicable to such lands which have already been put to use by the Government."

4. Amendment of Section 4.—In Section 4 of the principal Act, in sub-section (2), after the words "State Government", the words "and will fix the lease money at the rate notified by

the State Government from time to time. Such lease money shall be recovered by the Panchayat concerned from the lessee," shall be added.

5. Substitution of Section 5.-- For Section 5 of the principal Act, the following shall be substituted, namely:-

"5. Treatment of encroachments on shamlat land or the lands vested in the State Government.- Where the land vested in the State Government or the shamlat land by whatever term it is recorded in the revenue records, which has not vested in the State Government , has been encroached upon by any person or co-sharer before or after the commencement of this Act, the Revenue Officer may of his own motion or on the report of the Patwari of the circle duly verified by the Kanungo of the circle or on the application of any estate right holder or co-sharer, eject such person in accordance with the provisions of section 163 of the Himachal Pradesh Land Revenue Act,, 1954 (6 of 1954)."

6. Amendment of section 8.- In Section 8-A of the principal Act, in sub-section (1), in clause (b), after sub clause (ii), the following shall be added, namely:-

(a) after the words "State Government" and before the words "may utilize", the words "or any other Officer authorized by the State Government in this behalf" shall be added; and

(b) after the words "State Government" and before the words "is satisfied", the words "or the Officer authorized by it" shall be added.

7. Amendment of Section 8-A.—In Section 8-A of the principal Act.-

(a) after the words "State Government" and before the words "may utilize", the words "or any other Officer authorised by the State Government in this behalf" shall be added; and

(b) after the words "State Government" and before the words "is satisfied" , the words "or the Officer authorized by it" shall be added.

8. Insertion of Section 9-A.-- After Section 9 of the principal Act, the following shall be inserted, namely:-

"9-A. Review.—(1) The Collector or the Officer authorised by the State Government under Section 9 may, either on his own motion or on the application of any party interested, review and on so reviewing, modify, reverse or confirm any order passed by himself or by any of his predecessors in office.

(2) No order shall be modified or reversed in review unless a notice has been given to the parties affected thereby to appear and be heard in support of the order.

(3) An order against which an appeal has been preferred shall not be reviewed.

(4) An application for review of an order shall not be entertained unless it is made within 90 days of the passing of the order, or unless the applicant satisfies the Collector or an Officer authorised by the State Government that he had sufficient cause for not making the application within that period."

The statement of objects and reasons for bringing about the 2001 Amendment Act reads thus:

The State Government appointed a Committee to make a comprehensive review of the land laws of the State, which examined the Himachal Pradesh Village Common Lands vesting and Utilization Act, 1974. The Government further appointed a Committee of Officers of the revenue Department under the Chairmanship of the Commissioner (Revenue) to study the recommendations of the High Powered Committee. The Committee considered the recommendations and accepted most of them.

The expression "common purposes" is not defined in Section 2. In order to make the provision of section 3(a) clearer, it has been

decided to define the expression "common purposes". The limit of income fixed under clause (aa) of section 2, for being a "handicapped person" and in proviso to clause (aaa) of section 2, for being a "houseless person" is being revised.

In Section 4 of the Act ibid there is no clear provision about the lease money or rent etc. to be fixed by the Gram Panchayats which the lessee should pay. Now a provision of lease money to be charged by the Panchayat concerned from the lessee is being made. Similarly Section 5 provides for dealing with encroachment on lands vested in the State Government under Section 3 of the Act, but does not provide for as to how encroachments on Shamlat lands which have not vested in the State Government is to be removed. Hence, amendment has been proposed in Section 5 of the Act providing therein clear provision of ejectment of encroacher. At present there is no provision of review in the Act ibid, now it has been decided to make provision of review in the act itself. In order to remove irregularities and illegalities made in vestment of common land, it has been decided to give retrospective effect to the proposed Bill. These have necessitated the amendments in the Act ibid. "

The Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974 was further amended by the Himachal Pradesh Village Common Lands Vesting and Utilization (Amendment) Act, 2005. Sections 2 and 3 of 2005 Act reads thus:

2. In section 3 of the HimachalPradesh Village Common Lands Vesting and Utilization Act, 1974, after sub-section (2), the following new sub-sections shall be added, namely:-

"(2-a)The land reverted back to co-sharers under clause (d) of sub-section (2) shall not be transferred by such co-sharers, by way of sale, gift, mortgage or otherwise, during a period of twenty five years from the date of mutation of such land.

(2-b)No Registrar or the Sub-Registrar, appointed under the Registration Act, 1908, shall register any document

pertaining to transfer of such land, which is in contravention of sub-section (2-a) and such transfer shall be void ab initio and the land involved in such transfer, if made in contravention of sub-section (2-a), shall vest in the State Government free from all encumbrances."

3. (1) The Himachal Pradesh Village Common Lands Vesting and Utilization (Amendment) Ordinance, 2005 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Ordinance so repealed, shall be deemed to have been done or taken under the corresponding provisions of this Act.

The State Government had framed the Rules called the Himachal Pradesh Village Common Lands vesting and Utilization Rules, 1975, hereinafter referred to as the Rules. Rule 2 defines expression like 'Act', "allotable pool", "eligible person" etc. Rule 3 provides for taking possession of the land and Rule 4 provides the mechanism for mutation of land in favour of the State Government. The detailed procedure for demarcation of land under Section 8 has been provided under Rule 6.

The State Government has also framed the Rules called the Himachal Pradesh Lease Rules, 1993 in exercise of the powers vested under Section 13 of the of the Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974 and under Section 26 of the Himachal Pradesh Ceiling on Land Holdings Act, 1972. Rule 2 is a dictionary clause which defines various expressions like a "Demarcated Protected Forest", "Reserved Forest" etc. Rule 3 provides for the mechanism for the grant of land lease and Rule 4 provides for the purposes for which the lease may be granted. The maximum limit of grant is provided under Rule 5. The eligibility for the grant of land on lease is provided under Rule 6. The detailed procedure for grant of land on lease commences

from Rule 10 to 23. The Himachal Pradesh Lease Rules, 1993 have been further amended by the Himachal Pradesh Lease (Amendment) Rules, 2002 whereby amendments have been carried out in Rules 4, 5, 6, 8, 13, 20, 26 and 27.

The State has also framed a Scheme called the Himachal Pradesh Village Common Lands Vesting and Utilization Scheme 1975 hereinafter referred to as the 'Scheme'. Para 3 of the Scheme lays down the procedure to be observed by the Tehsil Revenue Officer, whereby it is provided that immediately after the land vested in the State Government under Section 3 of the Act is mutated in favour of the State, the Tehsildar Revenue Officer shall invite applications through proclamation from the eligible persons in form-1 to be submitted to him within six weeks thereof. The procedure for allotment of land from the allotable pool is provided under Para 5 of the Scheme. Para 7 provides that each allottee shall be given a certificate by the Collector and the mode of delivery of possession is provided under Para 7 of the Scheme. Para 9 of the Scheme lays down the conditions of allotment.

1. **Whether the petitioners have the necessary locus standi to file and maintain the writ petition on their behalf and on behalf of co-villagers for returning their land on the basis of insertion of clause (d) of sub-section (2) of section (3) of the H.P. Village Common Lands Vesting and Utilization Act, 1974?**

The present petition has been filed by the petitioners on their behalf as well on behalf of the Village Proprietors Body for returning of their lands which stood vested in the State of Himachal Pradesh by Act No.18 of 1974. The total land owned and possessed by the petitioners along with other villagers was 5679 bighas of village common land. The state had returned to them land measuring 4276.09 bighas after the passing of Act No.20 of 2001, but land measuring 1338.03 bighas has not been returned to them out of which land measuring 39.5 bighas had been granted in favour of respondent No.3 by way

of lease for mining purposes. The petitioners belong to remote area in district Sirmour. They have assailed the constitutional validity of Section 8-A added to the Principal Act by way of Act No.18 of 1981. They have also challenged the action of respondent State of not returning their own land to them to which they are legally entitled after the passing of Act no.20 of 2001.

The respondent No.3 has stated in his reply that he believed that on or about 14.12.2006 a meeting of the alleged right holders of Banor estate was held in which about 90% of the participants had passed a resolution to the effect that they have no objection of any kind for the operation of mining carried out by him. Mr.Deepak Kaushal learned counsel has filed reply on behalf of respondents No.4 to 329. In the reply filed on their behalf, the principal stand is that though they are co-owners of the village common land but they had no objection to the mining operation being carried out by respondent No.3. The manner in which the co-villagers i.e. respondents No. 4 to 329 have supported the case of the respondent No.3 depicts how gullible they are. The Court does not approve the *fiangle* manner in which the innocent villagers were made to approve the mining lease accorded in favour of respondent No.3 to the extent of waiving their own constitutional and legal rights. It is settled law by now that the fundamental rights can neither be waived nor bartered away. The Court once apprised of the true facts will never ever shirk from its responsibility enjoined upon it by the Constitution to protect the rights of the downtrodden/residuum like the petitioners and respondents No.4 to 329.

The validity of Section 8-A has been challenged by the petitioners primarily on the ground that it did not enjoy the protection of Schedule IX since the Presidential assent was not obtained in the year 1981 and secondly the term ‘development’ as per Section 8-A must be akin to the agricultural pursuits and by no stretch of imagination the land vested in the State could be allotted for the purpose of mining in favour of respondent No.3. Thirdly the petitioners have prayed for returning of their lands by the State after the insertion of sub

section (d) in sub section 2 of Section 3 of the Act which has come into force with effect from 9.8.1974. The petitioners have filed the petition for protection of their constitutional as well as legal rights.

Consequently it is held that the petitioners have the locus to file the petition on their behalf as also on behalf of the members of the proprietors' body for protecting their constitutional and legal rights. The plea raised by Mr. Bhupender Gupta, senior counsel that the present petition is actuated with legal malafide and has been filed to achieve ulterior purposes, is not sustainable. The petitioners are entitled to enforce their constitutional rights individually as well as for protection of the rights of the similarly situate villagers who due to poverty and ignorance are not in a position to approach this court for redressal of their grievances. The Court is fortified in taking this view in view of the definite pronouncements of law by the Supreme Court with regard to the locus standi and maintainability of public interest litigation.

Their Lordships of the Supreme Court have discussed the entire law with regard to filing and maintaining the public interest litigation in the following manner:

The Hon'ble Supreme Court after tracing the history and development of locus standi vis-à-vis public interest litigation has held in ***S.P. Gupta V. M. Tarkunde, J.L. Kalra and others, Iqbal M. Chagla and others, Rajappa, P. Subramaniam, D.N. Pandey and others. V. President of India and others etc., AIR 1982 SC 149*** as under:-

> **"The traditional rule in regard to locus standi is that judicial redress is available only to a person who has suffered a legal injury by reason of violation of his legal right or legal protected interest by the impugned action of the State or a public authority or any other person or who is likely to suffer a legal injury by reason of threatened violation of his legal right or legally protected interest by any such action. The basis of entitlement to judicial redress is personal injury to property, body, mind or reputation arising from violation, actual or threatened, of the**

legal right or legally protected interest of the person seeking such redress. This is a rule of ancient vintage and it arose during an era when private law dominated the legal scene and public law had not yet been born. The leading case in which this rule was enunciated and which marks the starting point of almost every discussion on locus standi is Exparte Sidebotham, (1980) 14 Ch D 458. There the Court was concerned with the question whether the appellant could be said to a 'person aggrieved' so as to be entitled to maintain the appeal. The Court in a unanimous view held that the appellant was not entitled to maintain the appeal because he was not a 'person aggrieved' by the decision of the lower Court. James, L.J. gave a definition of 'person aggrieved' which, though given in the context of the right to appeal against a decision of a lower Court, has been applied widely in determining the standing of a person to seek judicial redress, with the result that it has stultified the growth of the law in regard to judicial remedies. The learned Lord Justice said that a 'person aggrieved' must be a man "who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something." Thus definition was approved by Lord Esher M.R. in In Re Reed Bowen & Co. (1887) 19 QBD 174 and the learned Master of the Rolls made it clear that when James L.J. said that a person aggrieved must be a man against whom a decision has been pronounced which has wrongfully refused him of something, he obviously meant that the person aggrieved must be a man who has been refused something which he had a right to demand. There have been numerous subsequent decisions of the English Courts where this definition has been applied for the purpose of determining whether the person seeking judicial redress had locus standi to maintain the action. It will be seen that, according to this rule, it is only a person who has suffered a specific legal injury by reason of actual or threatened violation of his legal right or legally protected interest who can bring an action for judicial redress. Now obviously where an applicant has a legal right or a legally protected interest, the violation of which would result in legal injury to him,

there must be a corresponding duty owned by the other party to the applicant. This rule in regard to locus standi thus postulates a right duty pattern which is commonly to be found in private law litigation. But, narrow and rigid though this rule may be, there are a few exceptions to it which have been evolved by the Courts over the years.

There is also another exception which has been carved out of this strict rule of standing which requires that the applicant for judicial redress must have suffered a legal wrong or injury in order to entitle him to maintain an action for such redress. It is clear that, having regard to this rule, no one can ordinarily seek judicial redress for legal injury suffered by another person; it is only, such other person who must bring action for judicial redress. It is on this principle that the Supreme Court of the United States held in United States v. James Griggs Raines, (1960) 362 US 17 : 4 L Ed 2d 524 that a litigant may only assert his own constitutional rights or immunities and save in exceptional cases, no person can claim standing to vindicate the constitutional rights of a third party. But it must now be regarded as well settled law where a person who has suffered a legal wrong or a legal injury or whose legal right or legally protected interest is violated, is unable to approach the Court on account of some disability or it is not practicable for him to move the Court for some other sufficient reasons, such as his socially or economically disadvantaged position, some other person can invoke assistance of the Court for the purpose of providing judicial redress to the person wronged or injured, so that the legal wrong or injury caused to such person does not go unredressed and justice is done to him. Take for example, the case of a minor to whom a legal wrong has been done or a legal injury caused. He obviously cannot on his own approach the Court because of his disability arising from minority. The law there fore provides that any other person acting as his next friend may bring an action in his name for judicial redress vide : Order XXXII of Civil P.C. So also where a person is detained and is there fore not in a position to move the Court for securing his release, any other person may file an

application for a writ of habeas corpus challenging the legality of his detention. Of course, this Court has ruled in a number of cases that a prisoner is entitled to address a communication directly to the Court complaining against his detention and seeking release and if he addresses any such communication to the Court, the Superintendent of the prison is bound to forward it to the Court and, in fact, there have been numerous instances where this Court has acted on such communication received from a prisoner and treating it as an application for a writ of habeas corpus, called upon the detaining authority to justify the legality of such detention and on the failure of the detaining authority to do so, released the prisoner. But since a person detained would ordinarily be unable to communicate with the outside world, the law presumes that he will not be able to approach the Court and hence permits any other person to move the Court for judicial redress by filing an application for a writ of habeas corpus. Similarly, where a transaction is entered into by the Board of Directors of a company which is illegal or ultra vires the company, but the majority of the shareholders are in favour of it and hence it is not possible for the company to sue for setting aside the transaction, any shareholder may file an action impugning the transaction. Here it is the company which suffers a legal wrong or a legal injury by reason of the illegal or ultra vires transaction impugned in the action, but an individual shareholder is permitted to sue for redressing such legal wrong or injury to the company, because otherwise the company, being under the control of the majority shareholders would be without judicial redress. Vide: Atwood v. Merry Weather, (1867) 5 Eq 464, The Judicial Committee of the Privy Council also affirmed this exception to the strict rule of standing in Durayappah v. Fernando, (1967) 2 AC 337. There what happened was that the Jaffna Municipal Council was dissolved by the Minister of Local Government without giving it an opportunity to be heard. The order of dissolution was therefore voidable at the instance of the Council, but the Council did not complain. The appellant was a mayor at the time of the dissolution and he petitioned for a writ in the nature of certiorari to quash the order of dissolution. Lord

Upjohn speaking on behalf of the Judicial Committee denied standing to the appellant in the following words:

"The appellant was no doubt mayor at the time of its dissolution but that does not give him any right to complain independently of the Council. He must show that he is representing the Council or suing on its behalf or that by reason of certain circumstances, such, for example, as that the council could not use its seal because it is in the possession of the Municipal Commissioner, or for other reasons it has been impracticable for the members of the council to meet to pass the necessary resolutions, the council cannot be the plaintiff."

The Judicial Committee thus clearly laid down that for a legal wrong or legal injury caused to the council, it is only the council which can sue but if a member of the council can show that for some sufficient reasons it is not possible for the council to take action for challenging the order of dissolution, he can file an application for a writ to assert the right of the council and to redress the legal wrong or injury done to the council. We find that in the United States of America also this exception has been recognised and the strict rule of standing has been liberalized in the interest of justice. In Barrows v. Jackson, (1952) 346 US 249 : 97 Law Ed 1586, the defendant was sued for breach of a restrictive covenant binding the defendant not to sell his property to non-cancacians and claiming damages. The defendant raised the plea that the judgment of the Court allowing damages for breach of the covenant would constitute denial of the equal protection clause to non-cancacians, because a prospective seller of restricted land would either refuse to sell to non-cancacians or else would require non-cancacians to pay a higher price to meet the damages which the seller may have to pay. The argument put forward in answer to this plea was that the defendant was not entitled to plead in defence the constitutional rights of non-Caucasians. But the Supreme Court of the United States negatived this argument observing: "We are faced with a unique situation in which it is an action of the State Court which might result in a denial of constitutional rights and in which <u>it would be difficult if not impossible for the persons</u>

whose rights are asserted to present their grievance before any Court". Even in our own country we have recognised this departure from the strict rule of locus standi in cases where there has been a violation of the constitutional or legal rights of persons who by reason of their socially or economically disadvantaged position are unable to approach the Court for judicial redress. We have in such cases permitted a member of the public to move the Court for enforcement of the constitutional or legal rights of such persons and judicial redress for the legal wrong or legal injury caused to them. Take for example, the decision of this Court in Sunil Batra v. Delhi Administration, AIR 1980 SC 1579 where this Court accepted the habeas corpus petition of a prisoner complaining of brutal assault by a head warden on another prisoner. It may be incidentally mentioned and this is a point of some importance in the area of judicial remedies – that in this case the Court broadened the scope of habeas corpus by making it available to a prisoner, not only for seeking his liberty, but also for the enforcement of a constitutional right to which he was lawfully entitled even in confinement. Similarly, in Dr. Upendra Baxi v. State of U.P. (1981) 3 Scale 1137 when it was found that the inmates of the Protective Home at Agra were living in inhuman and degrading conditions in blatant violation of Art. 21 of the Constitution and by reason of their socially and economically disadvantaged position, they were not in a position to move the Court for judicial redress, two law professors of the Delhi University addressed a letter, to this Court seeking enforcement of the constitutional right of the inmates under Art. 21 by improvement of the living conditions in the Protective Home, so that the inmates can live with human dignity in the Protective Home. This Court treated the letter as a writ petition and permitted the two law professors to maintain an action for an appropriate writ for the purpose of enforcing the constitutional right of the inmates of the Protective Home and providing judicial redress to them. This Court has also entertained a letter addressed by a journalist claiming relief against demolition of hutments of pavement dwellers by the Municipal Corporation of Bombay and this letter has been treated as a Writ Petition by a

Bench presided over by the Chief Justice of India and interim relief has been granted to the pavement dwellers.

It may therefore now be taken as well established that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Art. 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this Court under Art. 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons. Where the weaker sections of the community are concerned, such as under trial prisoners languishing in jails without a trial inmates of the Protective Home in Agra or Harijan workers engaged in road construction in Ajmer District, who are living in poverty and destitution, who are barely eking out a miserable existence with their sweat and toil, who are helpless victims of an exploitative society and who do not have easy access to justice, this Court will not insist on a regular writ petition to be filed by the public spirited individual espousing their cause and seeking relief for them. This court will readily respond even to a letter addressed by such individual acting pro bono publico. It is true that there are rules made by this Court prescribing the procedure for moving this Court for relief under Art. 32 and they require various formalities to be gone through by a person seeking to approach this Court. But it must not be forgotten that procedure is but a handmaiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities. The Court would therefore unhesitatingly and without the slightest qualms of conscience case aside the technical rules of procedure in the exercise of its

dispensing power and treat the letter of the public minded individual as a writ petition and act upon it. Today a vast revolution is taking place in the judicial process; the theatre of the law is fast changing and the problems of the poor are coming to the forefront. The Court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning. The only way in which this can be done is by entertaining writ petitions and even letters from public spirited individuals seeking judicial redress for the benefit of persons who have suffered a legal wrong or a legal injury or whose constitutional or legal right has been violated but who by reason of their poverty or socially or economically disadvantaged position are unable to approach the Court for relief. It is in this spirit that the Court has been entertaining letters for judicial redress and treating them as writ petitions and we hope and trust that the High Courts of the country will also adopt this pro-active, goal-oriented approach. But we must hasten to make it clear that the individual who moves the Court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not allow itself to be activised at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the Court or even in the form of a regular writ petition filed in Court. We may also point out that as a matter of prudence and not as a rule of law, the Court may confine this strategic exercise of jurisdiction to cases where legal wrong or legal injury is caused to a determinate class or group of persons or the constitutional or legal right of such determinate class or group of persons is violated and as far as possible, not entertain cases of individual wrong or injury at the instance of a third party, where there is an effective legal aid organization which can take care of such cases.

The types of cases which we have dealt with so far for the purpose of considering the question of locus standi are those where there is a specific legal injury either to the applicant or to some other person or persons for whose benefit the action is brought, arising from violation of some constitutional or legal right or legally protected interest. What is complained of in these cases is a specific legal injury suffered by a person of a determinate class or group of persons. But there may be cases where the State or a public authority may act in violation of a constitutional or statutory obligation or fail to carry out such obligation, resulting in injury to public interest or what may conveniently be termed as public injury as distinguished from private injury. Who would have standing to complain against such act or omission of the State or public authority? Can any member of the public sue for judicial redress? Or is the standing limited only to a certain class of persons? Or there is no one who can complain and the public injury must go un-redressed. To answer these questions it is first of all necessary to understand what is the true purpose of the Judicial function. This is what Prof. Theo states in his book on "Locus Standi and Judicial Review":

"Is the judicial function primarily aimed at preserving legal order by confining the legislative and executive organs of government within their powers in the interest of the public (Jurisdiction de droit objectif) or is it mainly directed towards the protection of private individuals by preventing illegal encroachments on their individual rights (jurisdiction de droit subjectif)? The first contention rests on the theory that Courts are the final arbiters of what is legal and illegal …… Requirements of locus standi are therefore necessary in this case since they merely impede the purpose of the function as conceived here. On the other hand, where the prime aim of the judicial process is to protect individual rights, its concern with the regularity of law and administration is limited to the extent that individual rights are infringed."

We would regard the first proposition as correctly setting out the nature and purpose of the judicial function, as it is essential

to the maintenance of the rule of law that every organ of the State must act within the limits of its power and carry out the duty imposed upon it by the Constitution or the law. If the State or any public authority acts beyond the scope of its power and thereby causes a specific legal injury to a person or to a determinate class or group of persons, it would be a case of private injury actionable in the manner discussed in the preceding paragraphs. So also if the duty is owed by the State or any public authority to a person or to a determinate class or group of persons, it would give rise to a corresponding right in such person or determinate class or group of persons and they would be entitled to maintain an action for judicial redress. But if no specific legal injury is caused to a person or to a determinate class or group of persons by the act or omission of the State or any public authority and the injury is caused only to public interest, the question arises as to who can maintain an action for vindicating the rule of law and setting aside the unlawful action or enforcing the performance of the public duty. If no one can maintain an action for redress of such public wrong or public injury, it would be disastrous for the rule of law, for it would be open to the State or a public authority to act with impunity beyond the scope of its power or in breach of a public duty owed by it. The Courts cannot countenance such a situation where the observance of the law is left to the sweet will of the authority bound by it, without any redress if the law is contravened. The view has therefore been taken by the Courts in many decisions that whenever there is a public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting bonafide and having sufficient interest can maintain an action for redressal of such public wrong or public injury. The strict rule of standing which insists that only a person who has suffered a specific legal injury can maintain an action for judicial redress is relaxed and a broad rule is evolved which gives standing to any member of the public who is not a mere busy-body or a meddlesome interloper but who has sufficient interest in the proceeding. There can be no doubt that the risk of legal action against the State or a public

authority by any citizen will induce the State or such public authority to act with greater responsibility and care thereby improving the administration of justice. Lord Diplock rightly said in Rex v. Inland Revenue Commrs. (1981) 2 WLR 722 at p. 740:

"It would, in my view, be a grave lacuna in our system of public law if a pressure group, like the federation, or even a single public-spirited taxpayer, were prevented by out-dated technical rules of locus standi from bringing the matter to the attention of the Court to vindicate the rule of law and get the unlawful conduct stopped……. It is not, in my view, a sufficient answer to say that judicial review of the actions of officers or departments of central government is unnecessary because they are accountable to Parliament for the way in which they carry out their functions. They are accountable to Parliament for what they do so far as regards efficiency and policy, and of that Parliament is the only judge; they are responsible to a Court of Justice for the lawfulness of what they do, and of that the Court is the only judge."

The broadening of the rule of locus standi has been largely responsible for the development of public law, because it is only the availability of judicial remedy for enforcement which invests law with meaning and purpose or else the law would remain merely a paper parchment, a teasing illusion and a promise of unreality. It is only by liberalising the rule of locus standi that it is possible to effectively police the corridors of powers and prevent violations of law. It was pointed out by Schwartz and H.W.R. Wade in their book on "Legal Control of Government" at page 354:

"Restrictive rules about standing are in general inimical to a healthy system of administrative law. If a plaintiff with a good case is turned away, merely because he is not sufficiently affected personally, that means that some government agency is left free to violate the law, and that is contrary to the public interest. Litigants are unlikely to expend their time and money unless they have some real interest at stake. In the rare cases

where they wish to sue merely out of public spirit, why should they be discouraged?"

It is also necessary to point out that if no one can have standing to maintain an action for judicial redress in respect of a public wrong or public injury, not only will the cause of legality suffer but the people not having any judicial remedy to redress such public wrong or public injury may turn to the street and in that process, the rule of law will be seriously impaired. It is absolutely essential that the rule of law must wean the people away from the lawless street and win them for the court of law.

There is also another reason why the rule of locus standi needs to be liberalised. Today we find that law is being increasingly used as a device of organised social action for the purpose of bringing about socio-economic change. The task of national reconstruction upon which we are engaged has brought about enormous increase in developmental activities and law is being utilized for the purpose of development, social and economic. It is creating more and more a new category of rights in favour of large sections of people and imposing a new category of duties on the State and the public officials with a view to reaching social justice to the common man. Individual rights and duties are giving place to meta-individual, collective, social rights and duties of classes or groups of persons. This is not to say that individual rights have ceased to have a vital place in our society but it is recognised that these rights are practicably meaningless in today's setting unless accompanied by the social rights necessary to make them effective and really accessible to all. The new social and economic rights which are sought to be created in pursuance of the Directive principles of State Policy essentially require active intervention of the State and other public authorities. Amongst these social and economic rights are freedom from indigency, ignorance and discrimination as well as the right to a healthy environment, to social security and to protection from financial commercial, corporate or even governmental oppression. More and more frequently the conferment of these socio-economic rights and imposition of public duties on the State and other authorities for

taking positive action generates situations in which single human action can be beneficial or prejudicial to a large number of people, thus making entirely inadequate the traditional scheme of litigation as merely a two-party affairs. For example, the discharge of affluent in a lake or river may harm all who want to enjoy its clean water; emission of noxious gas may cause injury to large number of people who inhale it along with the air, defective or unhealthy packaging may cause damage to all consumers of goods and so illegal raising of railway or bus fares may affect the entire public which wants to use the railway or bus as a means of transport. In cases of this kind it would not be possible to say that any specific legal injury is caused to an individual or to a determinate class or group of individuals. What results in such cases is public injury and it is one of the characteristics of public injury that the act or acts complained of cannot necessarily be shown to affect the rights of determinate or identifiable class or group of persons: public injury is an injury to an indeterminate class of persons. In these cases the duty which is breached giving rise to the injury is owed by the State or a public authority not to any specific or determinate class or group of persons, but to the general public. In other words, the duty is one which is not correlative to any individual rights. Now if breach of such public duty were allowed to go unredressed because there is no one who has received a specific legal injury or who was entitled to participate in the proceedings pertaining to the decision relating to such public duty, the failure to perform such public duty would go unchecked and it would promote disrespect for the rule of law. It would also open the door for corruption and inefficiency because there would be no check on exercise of public power except what may be provided by the political machinery, which at best would be able to exercise only a limited control and at worst, might become a participant in misuse or abuse of power. It would also make the new social collective rights and interests created for the benefit of the deprived sections of the community meaningless and ineffectual.

Now, as pointed out by Cappellatti in Vol III of his classic work on "Access to Justice" at page 520, "The traditional doctrine of standing (legitimatio and causam) attributes the right to sue either to the private individual who 'holds' the right which is in need of judicial protection or in case of public rights, to the State itself, which sues in courts through its organs". The principle underlying the traditional rule of standing is that only the holder of the right can sue and it is therefore, held in many jurisdictions that since the State representing the public is the holder of the public rights, it alone can sue for redress of public injury or vindication of public interest. It is on this principle that in the United Kingdom, the Attorney-General is entrusted with the function of enforcing due observance of the law. The Attorney-General represents the public interest in its entirety and as pointed out by S.A. de Smith in "Judicial review of Administrative Action" (Third edition) at page 403; "the general public has an interest in seeing that the law is obeyed and for this purpose, the Attorney General represents the public." There is, therefore, a machinery in the United Kingdom for judicial redress for public injury and protection of social, collective, what Cappelletti calls 'diffuse' rights and interests. We have no such machinery here. We have undoubtedly an Attorney General as also Advocates General in the States, but they do not represent the public interest generally. They do so in a very limited field; see Sections 91 and 92 of the Civil Procedure Code. But, even if we had a provision empowering the Attorney General of the Advocate General to take action for vindicating public interest, I doubt very much whether it would be effective. The Attorney General or the Advocate General would be too dependent upon the political branches of Government to act as an advocate against abuses which are frequently generated at least tolerated by political and administrative bodies. Be that as it may, the fact remains that we have no such institution in our country and we have therefore to liberalise the rule of standing in order to provide judicial redress for public injury arising from breach of public duty or from other violation of the Constitution or the law. If public duties are to be enforced and social collective 'diffused' rights and interests are to be protected, we have to utilize the

initiative and zeal of public-minded persons and organisations by allowing them to move the court and act for a general or group interest, even though, they may not be directly injured in their own rights. It is for this reason that in public interest litigation – litigation undertaken for the purpose of redressing public injury, enforcing public duty, protecting social, collective, 'diffused' rights and interests or vindicating public interest, any citizen who is acting bona fide and who has sufficient interest has to be accorded standing. What is sufficient interest to give standing to a member of the public would have to be determined by the Court in each individual case. It is not possible for the Court to lay down any hard and fast rule or any strait-jacket formula for the purpose of defining or delimiting 'sufficient interest', it has necessarily to be left to the discretion of the Court. the reason is that in a modern complex society which is seeking to bring about transformation of its social and economic structure and trying to reach social justice to the vulnerable sections of the people by creating new social, collective 'diffuse' rights and interests and imposing new public duties on the State and other public authorities, infinite number of situations are bound to arise which cannot be imprisoned in a rigid mould or a procrustean formula. The Judge who has the correct social perspective and who is on the same wave-length as the Constitution will be able to decide, without any difficulty and in consonance with the constitutional objectives, whether a member of the public moving the court in a particular case has sufficient interest to initiate the action.

It is interesting to note that the concept of public interest litigation had its origin in the United States and over the years, it has passed through various vicissitudes in the country of its origin. We do not propose to enumerate or examine various decisions given by the Supreme Court of the United States from time to time in regard to standing in public interest litigation, for no useful purpose would be served by such exercise. Suffice it to state in that country, the strict requirement of legal interest has been watered down. Justice Douglas said in Association of Data Processing Service v. William B. Camp (1970) 397 US 150 :

25 Law Ed 2d 184 that "the legal interest tests goes to the merits. The question of standing is different". Similarly Justice Brennan. Citing Flats, observed that "the question is whether the person whose standing is challenged is a proper party to request an adjudication of a particular issue and not…… whether the plaintiff had a legally protected interest which the defendant's action invaded" Italics (herein underline) supplied). This view also found expression in Office of Communication of United Church of Christ v. FCC 123 US App DC 328 where the standing of television viewers was upheld with the following observations: Since the concept of standing is "one designed to assure that only one with a genuine and legitimate interest can participate in a proceeding, we can see no reason to exclude those with such an obvious and acute concern as the listening audience." Vide article on "Evolving Trends in Locus Standi; Models For Decision-Making" by D.Y. Chandrachud. But of late, there has been a slight regression in this dynamic approach. See United States v. William B. Richardson, (1974) 418 US 166 and Warth v. Seldin, (1974) 422 US 490, where the Supreme Court of United States seems to have recoiled a title against expansion of its judicial power.

So far as the United Kingdom is concerned, there have been remarkable developments in this area in recent times largely due to the dynamic activism of Lord Denning. The Mc. Whirter case and the three well known Blackburn cases clearly establish that any member of the public having sufficient interest can maintain an action for enforcing a public duty against a statutory or public authority. We need not make a detailed reference to all these cases but it will be sufficient if we refer to the Mc. Whirter case and one of the three Blackburn cases. The Mc Whirter case is reported in Attorney General v. Independent Broadcasting Authority (1973) 1 All ER 689. This was an action by Mc Whirter for injunction against the Broadcasting Authority which was threatening to show a film which did not comply with the statutory requirements and the showing of which would therefore be illegal. Lord Denning considered the question whether Mc Whirter had locus standi to bring the action when

leave to bring a relator action was refused by the Attorney General, and answering this question in the affirmative, he said:

> **"We live in an age when Parliament has placed statutory duties on government departments and public authorities for the benefit of the public – but has provided no remedy for the breach of them. If a government department or a public authority transgresses the law laid down by Parliament, or threatens to transgress it, can a member of the public come to the Court and draw the matter to its attention…. I am of the opinion that, in the last resort, if the Attorney General refuses leave in a proper case or improperly or unreasonably delays in giving leave, or his machinery works too slowly, then a member of the public who has sufficient interest, can himself apply to the Court itself."**

Lord Denning held that Mc Whirter had sufficient interest to bring the action since he had a television set for which he had paid licence fee and his susceptibility would be offended like that of many others watching television if the film was shown in breach of the statutory requirements. It may be noticed that in this case the duty which was sought to be enforced against the Broadcasting Authority was one which the Broadcasting Authority owed to the general public and not to any specific individual or class or group of individuals. The same principle was applied by Lord Denning in Reg v. Greater London Council, Ex parte Blackburn, (1976) 3 All ER 184 to accord standing to Blackburn to maintain an action for an order of prohibition preventing the greater London Council from allowing, contrary to law, the exhibition of pornographic films. Here again the duty owned by the Greater London Council was to the general public and not to any specific or determinate class or group of persons and there was no one who could claiom that a specific legal injury was caused to him by the exhibition of pornographic films. But even so Lord Denning held that Blackburn was entitled to maintain an action because he had sufficient interest, he was a citizen of London, his wife was a rate payer and he had children who might be harmed by the exhibition of pornographic films. The learned Master of the Rolls emphasized that if Blackburn had no sufficient interest, no other citizen had, and in that event no one would be able to bring an action for enforcing the law and the transgression of the law would continue unabated. The principle on

which the learned Master of the Rolls proceeded was formulated by him in these words:

> **"I regard it as a matter of high constitutional principle, that if there is good ground for supposing that a government department or a public authority is transgressing the law, or is about to transgress it, in a way which offends or injures thousands of his Majesty's subjects, then anyone of those offended or injured can draw it to the attention of the courts of law and seek to have the law enforced, and the courts in their discretion can grant whatever remedy is appropriate."**

The House of Lords, of course, in Gouriet v. UPW 1978 AC 482 took the view that the Attorney General alone can sue for enforcing the observance of the law and if he refuses to give his consent to a relator action, such refusal was not reviewable by the courts and without such consent, a member of the public could not maintain his action. We do not think it necessary to examine this decision because it has no binding effect upon us. But we may point out that this decision has been severely criticized by jurists in England and elsewhere. It is clearly erroneous and shows the high water mark of abdication of judicial power which is likely to stultify the development of public law in the United Kingdom. There is however one distinguishing feature which we must point out, namely, that the action in that case was a relator action and not application for a writ.

We would, therefore, hold that any member of the public having <u>sufficient interest</u> can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. This is absolutely essential for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realization of the constitutional objective "Law, as pointed out by Justice Krishna Iyer in Fertilizer Corporation Kamgar Union v. Union of India, AIR 1981 SC 344 "is a social auditor and this audit function can be put into action when some one with real public interest ignites the jurisdiction. A fear is sometimes expressed that if we keep the door wide open for any member of the public to enter the portals of the Court to enforce public

duty or to vindicate public interest, the Court will be flooded with litigation. But this fear is totally unfounded and the argument based upon it is answered completely by the Australian Law Reforms Commission in the following words:

> **"The idle and whimsical plaintiff, a dilettante who litigates for a lark, is a spectre which haunts the legal literature, not the court room (Prof. K. E. Scott: "Standing in the Supreme Court: A Functional Analysis" (1973) 86)**
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> **A major expressed reason for limiting standing rights is fear of a spate of actions brought by busybodies which will unduly extend the resources of the courts. No argument is easier put, none more difficult to rebut. Even if the fear be justified it does not follow that present restrictions should remain. If proper claims exist it may be necessary to provide recourses for their determination. However, the issue must be considered. ……. Over recent years successive decisions of the United States Supreme Court have liberalised standing so as to afford a hearing to any person with a real interest in the relevant controversy. Surveying the result in 1973 Professor Scott commended: (Op Cit, 673)**
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> **'When the floodgates of litigation are opened to some new class of controversy by a decision it is notable how rarely one can discern the flood that the dissentors feared.**
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> **Professor Scott went on to point out that the liberalised standing rules had caused no significant increase in the number of actions brought, arguing that parties will not litigate at considerable personal cost unless they have a real interest in a matter."**

We wholly endorse these remarks of the Australian Law Reforms Commission. We may add, with Justice Krishna Iyer: "In a society where freedoms suffer from atrophy, and activism is essential for participative public justice, some risks have to be taken and more opportunities opened for the public minded citizen to rely on the legal process and not be repelled from it by narrow pedantry now surrounding locus standi." It is also interesting to note that in India, as

in other Commonwealth countries, the strict rule of standing does not apply to a writ of quo warranto or a rate payer's action against a municipality, but there is no evidence that this has let loose the flood gates of litigation in these areas. The time, money and other inconveniences involved in litigating a case act as sufficient deterrent for most of us to take recourse to legal action vide article of Dr. S.N. Jain on "Standing and Public Interest Litigation."

Before we part with this general discussion in regard to locus standi, there is one point we would like to emphasise and it is that cases may arise where there is undoubtedly public injury by the act or omission of the State or a public authority but such act or omission also causes a specific legal injury to an individual or to a specific class or group of individuals. In such cases, a member of the public having sufficient interest can certainly maintain an action challenging the legality of such act or omission, but if the person or specific class or group of persons who are primarily injured as a result of such act or omission, do not wish to claim any relief and accept such act or omission willingly and without protest, the member of the public who complains of a secondary public injury cannot maintain the action, for the effect of entertaining the action at the instance of such member of the public would be to foist a relief on the person or specific class or group of persons primarily injured, which they do not want."

The Hon'ble Supreme Court has held in **Subhash Kumar v. State of Bihar and others, AIR 1991 SC 420** that recourse to public interest litigation should be taken up by a person genuinely interested in protecting society and the same cannot be invoked by person or body of persons to satisfy his or its personal grudge and enmity. Their Lordships have held as under:-

> **"Article 32 is designed for the enforcement of Fundamental Rights of a citizen by the Apex Court. It provides for an extraordinary procedure to safeguard the Fundamental rights of a citizen. Right to live is a fundamental right under Art. 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers of impairs that quality of life in derogation of laws, a citizen has right to have recourse to Art. 32 of the Constitution**

for removing the pollution of water or air which may be determined to the quality of life. A petition under Art. 32 for the prevention of pollution is maintainable at the instance of affected persons or even by a group of social workers or journalists. But recourse to proceedings under Art. 32 of the Constitution should be taken by a person genuinely interested in the protection of society on behalf of the community. Public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity. If such petitions under Article 32, are entertained it would amount to abuse of process of the Court, preventing speedy remedy to other genuine petitioners from this Court. Personal interest cannot be enforced through the process of this Court under Art. 32 of the Constitution in the garb of a public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of this Court under Art. 32 must approach this Court for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity. It is duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of this Court for personal mattes under the garb of the public interest litigation, see Bandhua Mukti Morch v. Union of India, (1984) 2 SCC 295 at p 331 : (AIR 1987 SC 1109); Ramsharan Autyanuprasi v. Union of India (1989) Supp 117 SCC 251 and Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P., (1990) 4 SCC 449."

The Hon'ble Supreme Court in **The Janta Dal v. H.S. Chowdhary and others, AIR 1993 SC 892** held that in defining the rule of locus standi no rigid test can be applied since broad contours are still developing. Their lordships have held as under:-

"Though it is imperative to lay down clear guidelines and propositions; and outline the correct parameters for entertaining a

Public Interest Litigation – particularly on the issue of locus standi yet no hard and fast rules have yet been formulated and no comprehensive guidelines have been evolved. There is also one view that such adumbration is not possible and it would not be expedient to lay down any general rule which would govern all cases under all circumstances.

Be that as it is may, it needless to emphasise that the requirement of locus standi of a party to a litigation is mandatory; because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold.

The traditional syntax of law in regard to locus standi for a specific judicial redress, sought by an individual person or determinate class or identifiable group of persons, is available only to that person or class or group of persons who has or have suffered a legal injury by reasons of violation of his or their legal right or a right legally protected, the invasion of which gives rise to actionability within the categories of law. In a private action, the litigation is bipolar; two opposed parties and locked in a confrontational controversy which pertains to the determination of the legal consequences of past events unlike in public action. The character of such litigation is essentially that of vindicating private rights, proceedings being brought by the persons in whom the right personally inhere or their legally constituted representatives who are thus obviously most competent to commence the litigation.

In contrast, the strict rule of locus standi applicable to private litigation is relaxed and a broad rule is evolved which gives the right of locus standi to any member of the public acting bona fide and having sufficient interest in instituting an action for redressal of public wrong or public injury, but who is not a mere busy body or a meddlesome interloper, since the dominant object of PIL is to ensure observance of the provisions of the Constitution or the law which can be best achieved to advance the cause of community or disadvantaged groups and individuals or public interest by permitting any person, having no personal gain or private motivation or any other oblique consideration but acting bona fide and having sufficient interest in maintaining an action for judicial redress for public injury to put the judicial machinery

in motion like actio popularis of Roman Law whereby any citizen could bring such an action in respect of a public delict.

From the above pronouncements, it emerges that this summit Court has widely enlarged the scope of PIL by relaxing and liberalising the rule of standing by treating letters or petitions sent by any person or association complaining violation of any fundamental rights and also entertaining Writ petitions filed under Art. 32 of the Constitution by public spirited and policy oriented activist persons or journalists or of any organisation rejecting serious challenges made with regard to the maintainability of such petitions rendered many virtuosic pronouncements and issued manifold directions to the Central and the State Governments, all local and other authorities within the territory of India or under the control of the Government of India for the betterment of the public at large in many fields in conformity with constitutional prescriptions of what constitutes the good life in a socially just democracy. The newly invented proposition of law laid down by many learned Judges of this Court in the arena of PIL irrefutably and manifestly establish that our dynamic activism in the field of PIL is by no means less than those of other activist judicial systems in other part of the world.

It may not be out of place to mention here that there may be numerous circumstances justifying the entertaining of Public Interest Litigation but we cannot obviously enumerate an exhaustive list of all such situations.

It is thus clear that only a person -acting bona fide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the Court for vindicating any personal grievance, deserves rejection at the threshold.

The Hon'ble Supreme Court has held in ***Dr. Meera Massey (Mrs.) versus Dr. S.R. Mehrotra and Others, (1998) 3 SCC 88*** that the Professor had the locus standi to assail the appointments of the Research Associates who are Evaluators

and Lecturers by the Executive Council in contravention of the Ordinance of the University. Their Lordships have held as under:-

> **"Having considered the submissions, we do not find any of the observations made hereinbefore is applicable in the present case. We find Dr. Mehrotra has filed the writ petition being concerned with the anomalies and illegalities in the procedure adopted by the University in making selection and regularising the various posts in contradiction to the Acts, Statute and Ordinances. He was aware fully of all what was happening with full grip of all the materials. Facts reveal he was genuinely concerned to rectify the wrongs without any personal animosity against anyone. His feelings were bona fide, being professor of History in the same University. He had all the details, fully equipped with facts and the law pertaining to the University. It was not for any personal gain. It was neither politically motivated nor for publicity. The golden key for public interest litigation was delivered in the land mark decision of this Court in, S.P. Gupta's case, 1981 (Suppl) SCC 87 : (AIR 1982 SC 149). This was devised for increasing citizens participation in the judicial process for making access to the judicial delivery system to such who could not otherwise reach Court for various reasons. But it is also true, since then this Court repeatedly has been cautioning its misuse laying down restrictions to scuttle out undesirable persons or body. It is in this context the above observations were made by this Court as relied by the appellants but that very authority accords approval for filing such public interest litigation. After having elaborately explained the concept of PIL, the learned Judge held that: (SCC p. 218, para 23)**
>
> **"… any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. This absolutely essential for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realization of the constitutional objectives."**

The Hon'ble Supreme Court has held in ***"J. Jayalalitha versus Government of Tamil Nadu and Others, (1999) 1 SCC 53*** that any taxpayer in the State has a right to challenge the misuse or improper use of any public property by anyone including the political party in power, where large sums of taxpayers' money had been spent to build such public property. Their Lordships have held as under:-

> **"We put this suggestion to learned Counsel and after some persuasive discussion, looking to the sensitivity of the matter, they have agreed to such proposition. We must hasten to add that this solution came after it was made clear to the parties' counsel that in the face of the ban imposed, we saw no justification for letting out the Stadium to any person to conduct activities other than sports and games or activities subservient, ancillary, or consequential to these objects. The step we have devised is just to save embarrassment to all concerned because we are told that lot of money has been spent in printing invitations to the invitees and as otherwise this would lead to lot of confusion to dignitaries who might have plans to come to participate in the celebration. We make it clear that the instance referred to in the letter of permission and the counter-affidavit filed by the respondents pertaining to a one time user of the Stadium by the present appellant when a Chief Minister, would in no event be permitted to be quoted as precedent or creating any right in favour of anyone to ever claim the Stadium for the purposes other than those mentioned earlier so long as the ban continues and we see no reason why the ban should not continue ever after. We are told that crores of rupees have gone to erect such a Stadium which meets international standards. It goes without saying that it was the tax-payers money which went to build the Stadium. The tax-payers have a right to its being maintained as such and not to be treated as just any other public place for being hired at convenience by anyone. The justification sought here that the State would be richer by two lacs of rupees as rental for the day does not convince us a wee bit. That understanding is totally alien to the purpose for which stadia are built and most of all, the present one.**

The Hon'ble Supreme Court has held in ***Chairman, Railway Board and Others versus Chandrima Das (Mrs.) and Others, (2002) 2 SCC 465*** that for the maintainability of the public interest petition, personal injury or loss is not an essential element of standing. Their Lordships have held as under:-

> **"The main contention of the learned counsel for the appellants is that Mrs. Chandrima Das was only a practising advocate of the Calcutta High Court and was, in no way, connected or related to the victim, Smt. Hanuffa Khatoon and, therefore, she could not have filed a petition under Article 226 for damages or compensation being awarded to Smt. Hanuffa Khatoon on account of the rape committed on her. This contention is based on a misconception. Learned counsel for the appellants is under the impression that the petition filed before the Calcutta High Court was only a petition for damages or compensation for Smt. Hanuffa Khatoon. As a matter of fact, the reliefs which were claimed in the petition included the relief for compensation. But many other reliefs as, for example, relief for eradicating anti-social and criminal activities of various kinds at Howrah Railway Station were also claimed. The true nature of the petition, therefore, was that of a petition filed in public interest.**
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> **The existence of a legal right, no doubt, is the foundation for a petition under Article 226 and a bare interest, may be of a minimum nature, may give locus standi to a person to file a Writ Petition, but the concept of "Locus Standi" has undergone a sea change, as we shall presently notice. In Dr. Satyanarayana Sinha v. S. Lal and Co. Pvt. Ltd., AIR 1973 SC 2720 : (1973) 2 SCC 696, it was held that the foundation for exercising jurisdiction under Article 32 or Article 226 is ordinarily the personal or individual right of the petitioner himself. In writs like Habeas Corpus and Quo Warranto, the rule has been relaxed and modified.**
>
> **Having regard to the nature of the petition filed by respondent Mrs. Chandrima Das and the relief claimed therein it cannot be doubted that this petition was filed in public interest which could legally be filed by the respondent and the argument that she; could not file that**

petition as there was nothing personal to her involved in that petition must be rejected."

The Hon'ble Supreme Court in ***M.S. Jayaraj versus Commissioner of Excise, Kerala and Others, (2000) 7 SCC 552*** has liberalised the principle of locus standi. Their Lordships have held as under:-

"In this context we noticed that this Court has changed from the earlier strict interpretation regarding locus standi as adopted in Nagar Rice & Flour Mills v. N. Teekappa Gowda & Bros., (1970) 1 SCC 575 : (AIR 1971 SC 246) and Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed, (1976) 1 SCC 671 : (AIR 1976 SC 578) and a much wider canvass has been adopted in later years regarding a person's entitlement to move the High Court involving writ jurisdiction. A four Judge Bench in Jasbhai Motibhai Desai (AIR 1976 SC 578) (supra) pointed out three categories of persons vis-a-vis the locus standi : (1) a person aggrieved; (2) a stranger; (3) a busybody or a meddlesome interloper. Learned Judges in that decision pointed out that any one belonging to the third category is easily distinguishable and such person interferes in things which do not concern him as he masquerades to be a crusader of justice. The Judgment has cautioned that the High Court should do well to reject the petitions of such busybody at the threshold itself. Then their Lordships observed the following: (SCC p. 683, para 38) :

"38. The distinction between the first and second categories of applicants, though real, is not always well demarcated. The first category has as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of 'persons aggrieved'. In the grey outer circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be persons aggrieved."

The Hon'ble Supreme Court in ***Ghulam Qadir versus Special Tribunal and Others, (2002) 1 SCC 33*** had made far reaching changes in the orthodox rule of interpretation regarding locus standi. Their Lordships have held as under:-

> **"There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid Article. The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea-change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with the cases or dis-lodging the claim of a litigant merely on hyper-technical grounds. If a person approaching the court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his having not the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi."**

Their Lordships of the Hon'ble Supreme Court have held in ***Indian Banks' Association, Bombay and Others versus Devkala Consultancy Service and Others, (2004) 11 SCC*** that the Supreme Court under Article 32 and the High Courts under Article 226 are entitled to entertain the petitions moved by a person having knowledge in the subject matter of the lis and, thus, having an interest therein as contradistinguished from a busybody for the welfare of the people. Their Lordships have held as under:-

> **"The writ petitioner before the High Court was a firm of the Chartered Accountant. As an expert in accountancy and au-**

> **diting, it must have come across several cases where its client had to pay a higher amount of interest to the banks pursuant to or in furtherance of the impugned action of the appellants. By reason of such an action on the part of the appellants as also the Reserve Bank of India, as noticed hereinbefore, the citizens of India had to pay a higher amount of tax as also a higher amount of interest for no fault on their part. The same had been recovered from them without any authority of law. While entertaining a public interest litigation, this Court in exercise of its jurisdiction under Art. 32 of the Constitution of India and the High Courts under Art. 226 thereof are entitled to entertain a petition moved by a person having knowledge in the subject-matter of Us and, thus, having an interest therein as contra distinguished from a busy body, is the welfare of the people. The rule of locus has been relaxed by the Courts for such purposes with a view to enable a citizen of India to approach the Courts to vindicate legal injury or legal wrong caused to a section of people by way of violation of any statutory or constitutional right."**

The Hon'ble Apex Court has held in ***Nandkishore Ganesh Joshi vesus Commissioner, Municipal Corporation of Kalyan & Dombivali and Others, (2004) 11 SCC 417*** that the member of the Standing Committee had the requisite standing in filing the public interest litigation. Their Lordships have held as under:-

> **"… Submission of Mr. Radhakrishnan that the Appellant has no locus standi to maintain the writ petition cannot be accepted keeping in view the fact that he was the Chairman of the Standing Committee and although the Standing Committee itself was not the writ petitioner. A question involving proper interpretation as regard the statutory provisions conferring a statutory right on a statutory authority vis-a-vis a statutory duty on the part of the Commissioner could be gone into by the High Court even in a public interest litigation."**

The Hon'ble Apex Court has held in ***Dittaraj Nathuji Thaware versus State of Maharashtra and Others, (2005) 1 SCC 590*** that a person acting bona fide and

having sufficient interest in the proceedings of public interest litigation will alone have a locus standi and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provision, but nor for personal gain or private profit or political motive or any oblique consideration. Their Lordships have held as under:-

> **"The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect."**

2. **Whether the present writ petition can be termed as public interest litigation in view of the constitutional issues raised for protecting the fundamental rights of the petitioners as well as the rights of co-villagers for the restoration of their land on the basis of amendment carried out in the year 2001, which earlier stood vested in the State in the year 1974?**

The entire concept of public interest litigation, class litigation and social action litigation has been succinctly dealt with by the Supreme Court in the following cases:

The Hon'ble Apex Court has held in ***Fertililzer Corporation Kamagar Union (Regd.) Sindri and others v. Union of India and Others, AIR 1981 SC 344*** that public interest litigation is part of the process of participate justice and "standing" in civil litigation of that pattern must have liberal reception at the judicial door steps. Their Lordships have held as under:-

> **"That disposes of the question as regards the maintainability of the writ petition. But, we feel concerned to point out that the maintainability of a writ petition which is correlated to the existence and violation of a fundamental right is not always to be confused with the locus to bring a proceeding under Article 32. These two matters often mingle and coalesce with the result that it becomes difficult to consider them in watertight compartments. The question whether a person has the locus to file a proceeding depends mostly and often on whether he possesses a legal right and that right is violated. But, in an appropriate case, it may become necessary in the changing awareness of legal rights and social obligations to take a broader view of the question of locus to initiate a proceeding, be it under Art. 226 or under Art. 32 of the Constitution. If public property is dissipated, it would require a strong argument to convince the Court that representative segments of the public or at least a section of the public which is directly interested and affected would have no right to complain of the infraction of public duties and obligations. Public enterprises are owned by the people and those who run them are accountable to the people. The accountability of the public sector to the Parliament is ineffective because the Parliamentary control of public enterprises is "diffuse and haphazard". We are not too sure if we would have refused relief to the workers if we had found that the mile was unjust, unfair or mala fide.**
>
> **A pragmatic approach to social justice compels us to interpret constitutional provisions, including those like Arts. 32 and 226, with a view to see that effective policing of the corridors of power is carried out by the. court until other ombudsman arrangements -- a problem with which Parliament has been wrestling for too long - emerges. I have dwelt at a little length on this policy aspect and the court process because the learned Attorney General challenged the**

petitioner's locus standi either qua worker or qua citizen to question in court the wrong doings of the public sector although he maintained that what had been done by the Corporation was both bona fide and correct. We certainly agree that judicial interference with the Administration cannot be meticulous in our Montesquien system of separation of powers. The court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded. If the Directorate of a Government company has acted fairly, even if it has faltered in its wisdom, the court cannot, as a superauditor, take the Board of Directors to task. This function is, limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules of public administration.

Law, as I conceive it, is a social ,auditor and this audit function can be put into action only when some one with real public interest ignites the jurisdiction. We cannot be scared by the fear that all and sundry will be litigation-happy and waste their time and money and the time of the court through false and frivolous cases. In a society where freedoms suffer from atrophy and activism is essential for participative public justice, some risks have to be taken and more opportunities opened for the public minded citizen to rely on the legal process and not be repelled from it by narrow pendantry now surrounding locus standi.

Schwartz and H. W. R. Wade wrote in Legal Control of Government:

"Restrictive rules about standing are in general inimical to a healthy system of administrative law. If a plaintiff with a good case is turned away, merely because he is not sufficiently affected personally, that means that some government agency is left free to violate the law, and that is contrary to the public interest. Litigants are unlikely to expend their time and money unless they have some real interest at stake. In. the rare cases where they wish to sue merely out of public spirit, why should they be discouraged?" [Professors Bernard Schwartz and H. W. R. Wade, O. C., in Legal Control of Government (1972), p. 291.]

They further observed:

"The problem of standing, or locus standi is inherent in all legal systems..... But in the United States, perhaps because of the

constitutional basis which the subject has acquired in federal law it can be discussed as a single topic. In Britain it is a thing of shreds and patches, made up of various differing rules which apply to various different remedies and procedures. It is a typical product of the untidy system of remedies, each with its own technicalities, which all British administrative lawyers would like to see reformed". [Ibid].

We have no doubt that having regard to the conditions in Third World countries. Cappelletti is right in his stress on the importance of access:

"The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement - the most basic 'human right" - of a system which purports to guarantee legal rights". [M. Cappelletti, Rabels Z (1976) 669 at 672.]

The need for a radical approach has been underscored in New Zealand by Black:

"..... today it is unreal to suggest that, a person looks to the law Solely to protect his interests in a narrow sense. It is necessary to do no more than read the newspapers to see the breadth of the interests that today's citizen expects the law to protect - and he expects the court where necessary to provide that protection. He is interested in results, not procedural niceties. " [Black. 'The Right to be Heard". New Zealand L. J., No. 4, 1977, 66.]

India is an a fortiori case, especially as it suffers from the pathology of mid Victorian concepts about cause of action. The Australian Law Reform Commission in its discussion paper No. 4 has considered the pros and cons and strongly supported the wider basis for access to justice. Class-actions will activise the legal process where individuals cannot approach the court for many reasons. I quote from the Discussion Paper No. 4: [The Law Reform Commission, Discussion Paper No. 4 - Access to the Court -1, Standing: Public Interest Suits, p. 4.]

'Widened standing rules may. assist consumers in attaining relevant injunctive or declaratory relief but they do not assist in recovering losses inflicted by illegal trading practices, nor do they threaten the illegal trader where he is most hurt, his pocket book. The most potent legal instrument in that regard so far devised is the modern class action, to some an 'engine of destruction,' to others a mighty force for good. Consider the New York Commissioner of Consumer Affairs giving evidence before a United States Senate Committee in 1970. [Evidence of Mrs. Bess Myerson, Commr. of Consumer Affairs of the City of New York, before the Consumer Sub-committee of the U. S. Senate Committee on Commerce, No. 91-48, at 172.]

'A federal class action law will have more impact on the market places of the nation than all the myriads of laws and ordinances against fraud and deception which are hidden away, in the statute books of the 50 States and their various sub-divisions, put together. All these laws make fraud illegal. But they have not made fraud unprofitable. Many of these laws can only be invoked by administrative agencies, which long ago lost their concern for the consumer and their appetite for action.

A Federal class action law .... will put the power to seek justice in court where it belongs - beyond the reach of campaign contributors, industry lobbyists, or Washington lawyers - and it will put power in the hands of the consumers themselves and in the hands of their own lawyers, retained by them to represent their interests alone. ' "

Public interest litigation is part of the process of participate justice and 'standing' in civil, litigation of that pattern must have liberal reception at the judicial doorsteps. The floodgates argument has been nailed by the Australian Law Reforms Commission :

"The idle and whimsical plaintiff, a dilettante who litigates for a lark, is a spectre which haunts the legal literature, not the court room. [Prof. K. E. Scott : "Standing in the Supreme Court : A Functional Analysis" (1973) 86.]

A major expressed reason for limiting standing rights is fear of a spate of actions brought by busybodies which will unduly extend the resources of the courts. No argument is easier put, none more difficult to rebut. Even if the fear be justified it does not follow that

present restrictions should remain. If proper claims exist it may be necessary to provide resources for their determination. However, the issue must be considered.

..... Over recent years successive decisions of the United States Supreme Court have liberalised standing so as to afford a hearing to any person with a real interest in the relevant controversy. Surveying the result in 1973 Professor Scott commented: [Op Cit, 673]

When the floodgates of litigation are opened to some new class of controversy by a decision it is notable how rarely one can discern the flood that the dissenters feared.

Professor Scott went on to point out that the liberalised standing rules bad caused no significant increase in the number of actions brought, arguing that parties will not litigate at considerable personal cost unless they have a real interest in a matter."

We agree with the conclusion of the Commission :

"The moral, perhaps, applies; if the courts cannot, or will not, give relief to people who are in fact concerned about a matter then they will resort to self-help, with grave results for other persons and the rule of law. Some may reply that if there Is no evidence of a great increase in numbers there is no evidence of need for enlarged standing rights. The reply would overlook two considerations. One case may have a dramatic effect on behaviour in hundreds of others; this is the whole notion of the legal 'test case'. Secondly, the mere exposure to possible action is likely to affect the behaviour of persons who presently feel themselves immune from legal control".

In the Municipal Council, Ratlam, (AIR 1980 SC 1622) a bench of this Court observed:

" 'it is procedural rules' as this appeal proves, 'which infuse life into substantive rights, which activate them to make them effective' ..... The truth is that a few profound issues of processual jurisprudence of great strategic significance to our legal system face us and we must zero-in on them as they involve problems of access to justice for the people beyond the blinkered rules of 'standing' of British Indian vintage. If the centre of gravity of justice is to shift, as the Preamble to the Constitution mandates, from the

traditional individualism. of locus standi to the community orientation of public interest litigation, these issues must be considered. In that sense, the case before us between the Ratlam Municipality and the citizens of a ward, is a path-finder in the field of people's involvement in the justicing process, sans which as Prof. Sikes points the system may 'crumble under the burden or its own insensitivity' .....

Our judicial system has been aptly described as follows :

Admirable though it may be, (it) is at once slow and costly. It is a finished product of great beauty, but entails an immense sacrifice of time, money and talent.

This "beautiful' system is frequently a luxury; it tends to give a high quality of justice only when, for one reason or another, parties can surmount the substantial barriers which it erects to most people and to many types of claims.

Why drive common people to public interest action? Where Directive Principles have found statutory expression in Do's and Dont's the court will not sit idly by....." [Municipal Council, Ratlam v. Shri Vardhichand-S. L. P. (Crl.) No. 2856 of 1979 - decided on July 29, 1980. (reported in AIR 1980 SC 1622).]

After all Australian, 16 November, 1977 was right. We quote as a concluding thought of benign import for us :-

"Under a banner 'Easier Access to Courts of Law the Australian, 16 November 1977 declared:

'Perhaps - and it is only a perhaps there was once some justification for restricting access to the courts to prevent their being bogged down in a morass of ineffectuality. But today's better informed, better educated, more literate and more politically aware citizens should certainly not be barred from the courts by tradition. The law can no longer be a closed shop."

The Hon'ble Supreme Court has held in ***Bandhua Mukti Morcha v. Union of India and Others, AIR 1984 SC 802*** that the public interest litigation is not in the nature of adversary litigation but is a challenge and an opportunity to the Government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic

justice which is the signature tune of our Constitution. Their Lordships have held as under:-

> **"We have on more occasions than one said that public interest litigation is not in the nature of adversary litigation but it is a challenge and an opportunity to the government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of our Constitution. The Government and its officers must welcome public interest litigation, because it would provide them an occasion to examine whether the poor and the down-trodden are getting their social and economic entitlements or whether they are continuing to remain victims of deception and exploitation at the hands of strong and powerful sections of the community and whether social and economic justice has become a meaningful reality for them or, it has remained merely a teasing illusion and a promise of unreality, so that in case the complaint in the public interest litigation is found to be true, they can in discharge of their constitutional obligation root out exploitation and injustice and ensure to the weaker sections their rights and entitlements. When the Court entertains public interest litigation, it does not do so in a cavilling spirit or in a confrontational mood or with a view to tilting at executive authority or seeking to usurp it, but its attempt is only to ensure, observance of social and economic rescue programmes, legislative as well as executive, framed for the benefit of the have-nots and the handicapped and to protect them against violation of their basic human rights, which is also the constitutional obligation of the, executive. The Court is thus merely assisting in the realisation of the constitutional objectives.**

The Hon'ble Apex Court in ***The Janta Dal v. H.S. Chowdhary and Others, AIR 1993 SC 892*** has explained the expression public interest litigation to mean legal action initiated for enforcement of public or general interest. Their Lordships have held as under:-

> **"The expression 'litigation' means a legal action including all proceedings therein, initiated in a Court of Law with the purpose of**

enforcing a right or seeking a remedy. Therefore, lexically the expression 'PIL' means a legal action initiated in a Court of Law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected. There is a host of decisions explaining the expression 'PIL' in its wider connotation in the present day context in modern society, a few of which we will refer to in the appropriate part of this judgment.

From the above pronouncements, it emerges that this summit Court has widely enlarged the scope of PIL by relaxing and liberalising the rule of standing by treating letters or petitions sent by any person or association complaining violation of any fundamental rights and also entertaining Writ petitions filed under Art. 32 of the Constitution by public spirited and policy oriented activist persons or journalists or of any organisation rejecting serious challenges made with regard to the maintainability of such petitions rendered many virtuosic pronouncements and issued manifold directions to the Central and the State Governments, all local and other authorities within the territory of India or under the control of the Government of India for the betterment of the public at large in many fields in conformity with constitutional prescriptions of what constitutes the good life in a socially just democracy. The newly invented proposition of law laid down by many learned Judges of this Court in the arena of PIL irrefutably and manifestly establish that our dynamic activism in the field of PIL is by no means less than those of other activist judicial systems in other part of the world.

It may not be out of place to mention here that there may be numerous circumstances justifying the entertaining of Public Interest Litigation but we cannot obviously enumerate an exhaustive list of all such situations.

Bhagwati, J. in S. P. Gupta's case, (AIR 1982 SC 149) (popularly known as Judges' Appointment and Transfer case) which was heard by a Bench of seven learned Judges, has clearly defined 'what PIL means and is' and expressed his views in meticulous detail in the following. terms (para 17 of AIR):

"It may therefore now be taken as well established that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member, of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this Court under Art. 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons ..... This Court will readily respond even to a letter addressed by such individual acting pro bono publico. It is true that there are rules made by this Court prescribing the procedure for moving this Court for relief under Article 32 and they require various formalities to be gone through by a person seeking to approach this Court. But it must not be forgotten that procedure is but a handmaiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities. The Court would therefore unhesitatingly and without the slightest qualms of conscience cast aside the technical rules of procedure in the exercise of its dispensing power and treat the letter of public-minded individual as a writ petition and act upon it.....But we must hasten to make it clear that the individual who moves the Court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not allow itself to be activised at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the Court or petition even in the form of a regular writ filed in Court. We may also point out that as a matter of prudence and not as a rule of law, the Court may confine this strategic exercise of jurisdiction to

cases where legal wrong or legal injury is caused to a determinate class or group of persons or the constitutional or legal right of such determinate class or group of persons is violated and as far as possible, not entertain cases of individual wrong or injury at the instance of a third party, where there is an effective legal-aid organization which can take care of such cases."

After having elaborately explained the concept of PIL, the learned Judge held that :

".....any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. This is absolutely essential for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realization of the constitutional objectives."

However, the learned Judge has sounded a note of caution to the Courts to be observed while entertaining a Public Interest Litigation as follows:

"But we must be careful to see that the member of the public, who approaches the Court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The Court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective."

The Hon'ble Apex Court has held in ***Gaurav Jain versus Union of India and Others, (1997) 8 SCC 114*** that the public interest litigation is not adversarial and it is one of collaboration and cooperation between the State and the Court. Their Lordships have held further that the rigour of the pleadings or the relief sought for in adversarial litigation, be softened, new methods, tools and procedures be evolved to mete out justice to enforce the fundamental rights. Their Lordships have held as under:-

"It would, thus, be the established procedure of this Court under Article 32 that the public interest litigation is not adversarial. It is one of collaboration and cooperation between

the State and the Court. This Court as the sentinel on the qui vive, is constitutionally obligated to enforce the fundamental rights of all the citizens of the country and to protect them from exploitation and to provide guidance and direction for facilities and opportunities to them for securing socio-economic justice, empowerment and to free the handicapped persons from the disabilities with which they suffer from and to make them realise and enjoy the fundamental rights ensured to them under the Constitution. In that behalf, this Court is entitled and empowered under Article 32 to adopt such procedure as is expedient in a given fact situation and deal with the matter appropriately. Therefore, the rigour of the pleadings or the reliefs sought for in adversarial litigation, has been softened; new methods, tools and procedures were evolved to mete out justice and to enforce the fundamental rights. Obviously, therefore, when a limited relief to establish separate schools for the children of the fallen women was sought for by the petitioner-Gaurav Jain, this Court did not confine to the same. It, instead, enlarged the scope and directed the authorities as an interim measure to have those children admitted in the general schools to make the children overcome the disabilities had from foul atmosphere and to generate the feeling of oneness and dissegregation. In addition, this Court appointed V. C. Mahajan Committee to enquire into and submit a report. The report was accordingly submitted after extensive travelling to far and wide parts of the country; it studied not only the problem of the children of the fallen women but also the route cause of the menace of child prostitution and the prostitution as such and the need for its eradication. The prevailing conditions have been pointed out in the Report and beneficial actions already taken by some of the Social Action Groups have been pointed and also noted as illustrated hereinabove. They have also dealt with the problems of the children. The State Governments and the Central Government were supplied with the copies of the Report and they have not even objected to the recommendations; in fact, they cannot be objected to since it is a fact prevailing, unfortunately, in the country. Therefore, the relief cannot be restricted to the pleadings or to the scope of the directions earlier issued; the

Court can take cognizance from indisputable or the undisputed facts from the Report of V. C. Mahajan Committee and other reports and articles published in recognised Journals and act upon it. Placing reliance thereon, the directions given in the Order, aim not only at giving benefits to the children but also to root out the very source of the problem as has been pointed out in the first part of the Order, it is for the Government to evolve suitable programme of action. My learned brother has very graciously agreed to the second part of the order relating to the setting up of juvenile homes for the prostitute children and children of fallen women.

The Hon'ble Supreme Court has reiterated the parameters with regard to filing and maintainability of the public interest litigation in ***BALCO Employees Union (Regd.) v. Union of India and Others, AIR 2002 SC 350*** as under:-

"Public interest litigation, or PIL as it is more commonly known, entered the Indian judicial process in 1970. It will not be incorrect to say that it is primarily the judges who have innovated this type of litigation as there was a dire need for it. At that stage, it was intended to vindicate public interest where fundamental and other rights of the people who were poor, ignorant or in socially or economically disadvantageous position and were unable to seek legal redress, were required to be espoused. PIL was not meant to be adversarial in nature and was to be a co-operative and collaborative effort of the parties and the Court, so as to secure justice for the poor and the weaker sections of the community who were not in a position to protect their own interests. Public interest litigation was intended to mean nothing more than what words themselves said viz., 'litigation in the interest of the public'.

While PIL initially was invoked mostly in cases connected with the relief to the people and the weaker sections of the society and in areas where there was violation of human rights under Article 21, but with the passage of time, petitions have been entertained in other spheres. Prof. S.B. Sathe has summarised the extent of the jurisdiction which has now been exercised in following words :- "PIL may, therefore, be described as

satisfying one or more of the following parameters. These are not exclusive but merely descriptive: * Where the concerns underlying a petition are not individualist but are shared widely by a large number of people bonded labourer, undertrial prisoners, prison inmates.. * Where the affected persons belong to the disadvantaged sections of society women, children, bonded labourer, unorganised labourer etc... * Where judicial law making is necessary to avoid exploitation inter-country adoption, the education of the children of the prostitutes.. * Where judicial intervention is necessary for the protection of the sanctity of democratic institutions independence of the judiciary, existence of grievances redressal forums.. * Where administrative decisions related to development are harmful to the environment and jeopardize people's to natural resources such as air or water".

It will be seen that whenever the Court has interfered and given directions while entertaining PIL, it has mainly been where there has been an element of violation of Article 21 or of human rights or where the litigation has been initiated for the benefit of the poor and the underprivileged who are unable to come to court due to some disadvantage. In those cases also, it is the legal rights which are secured by the courts. We may, however, add that public interest litigation was not meant to be a weapon to challenge the financial or economic decisions which are taken by the government in exercise of their administrative power. No doubt, a person personally aggrieved by any such decision, which he regards as illegal, can impugn the same in a court of law, but, a public interest litigation at the behest of a stranger ought not to be entertained. Such a litigation cannot per se be on behalf of the poor and the downtrodden, unless the Court is satisfied that there has been violation of Article 21, and the persons adversely affected, are unable to approach the Court."

The Hon'ble Supreme Court has held in ***Mohd. Aslam alias Bhure versus Union of India and Others, (2003) 4 SCC 1*** that it would not approach matters where public interest is involved in a technical or a narrow manner. Their Lordships have held as under:-

"On several occasions this Court has treated letters, telegrams or post cards or news reports as writ petitions. In such petitions, on the basis of pleadings that emerge in the case after notice to different parties, relief has been given or refused. Therefore, this Court would not approach matters where public interest is involved in a technical or a narrow manner. Particularly, when this Court has entertained this petition, issued notice to different parties, new parties have been impleaded and interim order has also been granted, it would not be appropriate for his Court to dispose of the petition on that ground."

The Hon'ble Supreme Court in ***Guruvayoor Devaswom Managing Committee and Another versus C.K. Rajan and Others, (2003) 7 SCC 546*** has summarised the principles evolved by the Hon'ble Supreme Court in relation to Public Interest Litigation as under:-

"The principles evolved by this Court in this behalf may be suitably summarized as under :

(i) The Court in exercise of powers under Art. 32 and Art. 226 of the Constitution of India can entertain a petition filed by any interested person in the welfare of the people who is in a disadvantaged position and, thus, not in a position to knock the doors of the Court.

The Court is constitutionally bound to protect the fundamental rights of such disadvantaged people so as to direct the State to fulfill its constitutional promises. (See S. P. Gupta v. Union of India (1981 (Supp) SCC 87), People's Union for Democratic Rights and others v. Union of India (1982) 2 SCC 494; Bandhua Mukti Morcha v. Union of India and others (1984) 3 SCC 161 and Janata Dal v. H. S. Chowdhary and others (1992) 4 SCC 305).

(ii) Issue of public importance, enforcement of fundamental rights of large number of public vis-a- vis the constitutional duties and functions of the State, if raised, the Court treat a letter or a telegram as a public interest litigation upon relaxing procedural laws as also the law relating to pleadings. (See Charles Sobraj v. Supdt, Central Jail, Tihar, New

Delhi (1978) 4 SCC 104 and Hussainara Khatoon and others v. Home Secretary, State of Bihar (1980) 1 SCC 81).

(iii) Whenever injustice is meted out to a large number of people, the Court will not hesitate in stepping in. Articles 14 and 21 of the Constitution of India as well as the International Conventions on Human Rights provide for reasonable and fair trial.

Mrs. Maneka Sanjay Gandhi and another v. Miss Rani Jethmalani, AIR 1979 SC 468, it was held :

"2. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the Court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant, environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have Lo test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any Court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the Court may weigh the circumstances."

(See also Dwarka Prasad Agarwal (D) by L.Rs. and another v. B. D. Agarwal and others, 2003 (6) Scale 138).

(iv) The common rule of locus stand! is relaxed so as to enable the Court to look into the grievances complained on behalf of the poor, depraved, illiterate and the disabled who cannot vindicate the legal wrong or legal injury caused to them for any violation of any constitutional or legal right. (See Fertilizer Corporation Kamgar Union v. Union of India, AIR 1981 SC 344; S. P. Gupta (supra); People's Union for Democratic Rights (supra); Dr. D. C. Wadhwa v. State of Bihar (1987) 1 SCC 378 and Balco Employees' Union (Regd.) v. Union of India and others (2002) 2 SCC 333).

(v) When the Court is prima facie satisfied about variation of any constitutional right of a group of people belonging to the disadvantaged category, it may riot allow the State or the Government from raising the question as to the maintainability of the petition. (See Bandhua Mukti Morcha (supra)).

(vi) Although procedural laws apply on PIL cases but the question as to whether the principles of res judicata or principles analogous thereto would apply depend on the nature of the petition as also facts and circumstances of the case. (See Rural Litigation and Entitlement Kendra v. State of U.P., 1989 Supp (1) SCC 504 and Forward Construction Co. and others v. Prabhat Mandal (Regd.), Andheri and others (1986) 1 SCC 100).

(vii) The dispute between two warring groups purely in the realm of private law would not be allowed to be agitated as a public interest litigation. (See Ramsharan Autyanuprasi and another v. Union of India and others, 1989 Supp (1) SCC 251).

(viii) However, in an appropriate case, although the petitioner might have moved a Court in his private interest and for redressal of the personal grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice. (See Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi and others (1987) 1 SCC 227).

(ix) The Court in special situations may appoint Commission, or other bodies for the purpose of investigating into the allegations and finding out facts. It may also direct management of a public institution taken over by such Committee. (See Bandhua Mukti Morcha (supra), Rakesh Chandra Narayan v. State of Bihar, 1989 Supp (1) SCC 644 and A. P. Pollution Control Board v. M. V. Nayudu (1999) 2 SCC 718)

In Sachidanand Pandey and another v. State of West Bengal and others ((1987) 2 SCC 295), this Court held :

"61. It is only when Courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the Courts, especially this Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available pro-

visions for remedying the hardships and miseries of the needy, the underdog and the neglected. I will be second to none in extending help when such is required. But this does mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants."

In Janata Dal v. H. S.Chowdhary and others (1992) 4 SCC 305, this Court opined .

"109. It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the Court for vindicating any personal grievance, deserves rejection at the threshold."

The Court will not ordinarily transgress into a policy. It shall also take utmost care not to transgress its jurisdiction while purporting to protect the rights of the people from being violated.

Narmada Bachao Andolan v. Union of India Paras and others ((2000) 10 SCC 664), it was held;

"229. It is now well settled that the Courts, in the exercise of their jurisdiction, will not transgress into the field of policy-decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the Courts are ill-equipped to adjudicate on a policy-decision so undertaken. The Court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution. Even then any challenge to such a policy-decision must be before the execution of the project is undertaken. Any delay in the execution of the project means overrun in costs and the decision to undertake a project, If challenged after its execution has commenced, should be thrown out at the very threshold on the ground of laches if the petitioner had the knowledge of such a decision and could have approached the Court at that time. Just because a petition is termed

as a PIL does not mean that ordinary principles applicable to litigation will not apply. Laches is one of them.

232. While protecting the rights of the people from being violated in any manner utmost care has to be taken that the Court does not transgress its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The Court has come down heavily whenever the executive has sought to impinge upon the Court's jurisdiction."

(x) The Court would ordinarily not step out of the known areas of judicial review. The High Courts although may pass an order for doing complete justice to the parties, it does not have a power akin to Art. 142 of the Constitution of India.

(xi) Ordinarily the High Court should not entertain a writ petition by way of Public Interest Litigation questioning constitutionality or validity of a statute or a Statutory Rule.

In ***M. C. Mehta v. Kamal Nath ((2000) 6 SCC 213***, it was held :

"20. The scope of Art. 142 was considered in several decisions and recently in Supreme Court Bar Association v. Union of India (1998) 4 SCC 409 by which the decision of this Court in Vinay Chandra Mishra, Re (1995) 2 SCC 584 was partly overruled, it was held that the plenary powers of this Court under Art. 142 of the Constitution are inherent in the Court and are "COMPLEMENTARY" to those powers which are specifically conferred on the Court by various statutes. This power exists as a separate and independent basis of jurisdiction apart from the statutes. The Court further observed that though the powers conferred on the Court by Art. 142 are curative in nature, they cannot be construed as powers which authorise the Court to ignore the substantive rights of a litigant. The Court further observed that this power cannot be used to "supplant" substantive law applicable to the case or cause under consideration of the Court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby achieve something indirectly which cannot be achieved directly."

(See also Supreme Court Bar Association v. Union of India (1998) 4 SCC 409).

This Court in Balco Employees Union (Regd.) (supra) succinctly opined:

"Public interest litigation, or PIL as it is more commonly known, entered the Indian judicial process in 1970. It will not be incorrect to say that it is primarily the Judges who have innovated this type of litigation as there was a dire need for it. At i that stage, it was intended to vindicate public interest where fundamental and other rights of the people who were poor, ignorant or in socially or economically disadvantageous position and were unable to seek legal redress were required to be espoused. PIL was not meant to be adversarial in nature and was to be a co-operative and collaborative effort of the parties and the Court so as to secure justice for the poor and the weaker sections of the community who were not in a position to protect their own interests. Public interest litigation was intended to mean nothing more than what words themselves said viz. "litigation in the interest of the public."

While PIL initially was invoked mostly in cases connected with the relief to the people and the weaker sections of the society and in areas where there was violation of human rights under Art. 21, but with the passage of time, petitions have been entertained in other spheres. Prof. S. B. Sathe has summarised the extent of the jurisdiction which has now been exercised in the following words :

"PIL may, therefore, be described as satisfying one or more of the following parameters. These are not exclusive but merely descriptive :

- Where the concerns underlying a petition are not individualist but are shared widely by a large number of people (bonded labour, under-trial prisoners, prison inmates).

- Where the affected persons belong to the disadvantaged sections of society (women, children, bonded labour, unorganised labour etc.).

- Where judicial law making is necessary to avoid exploitation (inter-country adoption, the education of the children of the prostitutes).

- Where judicial intervention is necessary for the protection of the sanctity of democratic institutions (independence of the judiciary, existence of grievances redressal forums).

- Where administrative decisions related to development are harmful to the environment and jeopardize people's right to natural resources such as air or water."

There is, in recent years, a feeling which is not without any foundation that public interest litigation is now tending to become publicity interest litigation or private interest litigation and has a tendency to be counterproductive.

PIL is' not a pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public spirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the Court for relief. There, have been, in recent times, increasingly instances of abuse of PIL. Therefore, there is a need to re-emphasise the parameters within which PIL can be resorted to by a petitioner and entertained by the Court. This aspect has come up for consideration before this Court and all we need to do is to recapitulate and re-emphasise the same."

We do not intend to say that the dicta of this Court in Balco Employees' Union (supra) contains the last words. But the same may be considered to be in the nature of guidelines for entertaining public interest litigation.

Incidentally, on administrative side of this Court, certain guidelines have been issued to be followed for entertaining Letters/Petitions received by this Court as Public Interest Litigation.

We do not intend to lay down any strict rule as to the scope and extent of Public Interest Litigation, as each case has to be judged on its own merits. Furthermore, different problems may have to be dealt with differently."

The Hon'ble Apex Court has explained the nature and scope of public interest litigation in *Ashok Kumar Pandey versus State of W.B., (2004) 3 SCC 349* as under:-

> **"It is necessary to take note of the meaning of expression 'public interest litigation'. In Strouds Judicial Dictionary, Volume 4 (IV Edition), 'Public Interest' is defined thus:**
>
> > **"Public Interest (1) a matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected."**
>
> **In Black's Law Dictionary (Sixth Edition), "public interest" is defined as follows :**
>
> > **"Public Interest something in which the public, or some interest by which their legal rights or liabilities are affected. It does not mean anything the particular localities, which may be affected by the matters in question. Interest shared by national government...."**
>
> **Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with**

judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs."

The principles explained in *Ashok Panday's* case have been reiterated in *Dr. B. Singh versus Union of India and Others, (2004) 3 SCC 363*.

The Hon'ble Supreme Court has held in ***Indian Banks' Association, Bombay and Others versus Devkala Consultancy Service and Others, (2004) 11 SCC 1*** that in an appropriate case, whether the petitioner might have moved a Court in his private interest and for redressal of his personal grievance, the Court in furtherance of public interest may treat it a necessity to enquire into the state of affairs of the subject of litigation in the interest of justice. The Hon'ble Supreme Court has further has further held that a private interest case can also be treated as public interest case. Their Lordships have held as under:-

"The writ petitioner before the High Court was a firm of the Chartered Accountant. As an expert in accountancy and auditing, it must have come across several cases where its client had to pay a higher amount of interest to the banks pursuant to or in furtherance of the impugned action of the appellants. By reason of such an action on the part of the appellants as also the Reserve Bank of India, as noticed hereinbefore, the citizens of India had to pay a higher amount of tax as also a higher amount of interest for no fault on their part. The same had been recovered from them without any authority of law. While entertaining a public interest litigation, this Court in exercise of its jurisdiction under Art. 32 of the Constitution of India and the High Courts under Art. 226 thereof are entitled to entertain a petition moved by a person having knowledge in the subject-matter of Us and, thus, having an interest therein as contra distinguished from a busy body, is the welfare of the people. The rule of locus has been relaxed by the Courts for such purposes with a view to enable a citizen of India to approach the Courts to vindicate legal injury or legal wrong caused to

a section of people by way of violation of any statutory or constitutional right."

In view of the pleadings of the parties and after taking into consideration the submissions of the parties, we are of the considered opinion that this petition can be termed as public interest litigation for the enforcement and protection of the fundamental rights of the petitioners as well as co-villagers, who had been divested of their lands in the year 1974. The petition has been primarily filed seeking direction to the respondent-State to return the lands of the petitioners as well as the lands of the co-villagers after the amendment carried out in the Principal Act in the year 2001.

3. Whether the present writ petition suffers from the vice of delay and laches and negligence on the part of the petitioners?

The petitioners have assailed the vires of Section 8-A inserted in the Principal Act by way of Act no.18 of 1981. The petitioners were deprived of their land on the basis of the Principal Act which received the presidential assent on 9.8.1974. The petitioners submission is that term 'development' in Section 8-A will mean only if it is carried out towards the agricultural pursuits in furtherance of the main objective of the Principal Act and term 'development' will not include grant of lease for the purpose of mining. The petitioners had been returned land measuring 4276.01 bighas but the remaining land measuring 1338.03 bighas has not been returned to them on the pretext that the same had been used by the State by granting it on lease for the purpose of mining activities. The petition raises questions of great constitutional and public importance and are required to be gone into by this Court being the protector of the constitutional and legal rights of the citizens of India.

Ms. Jyotsna Rewal Dua learned counsel appearing for the petitioners submitted that initially the vires of the Act included in the 9th schedule could be assailed only on the limited ground as per the law laid down by the Hon'ble

Supreme Court in Waman Rao's case AIR 1981 SC 271 but after the latest judgment of the Hon'ble Supreme Court in **Lr.Coelho(dead) by LRs. v. State of T.N**.,(2007)2 SCC-1 the vires of the Act can be challenged if it is violative of the rights enumerated in Part-III of the Constitution of India. The State has not taken the objection with regard to delay and laches. It is only the respondent No.3 who had taken up the plea of delay and laches in reply to the petition.

We are of the opinion that there is no inordinate delay in challenging the vires of Section 8-A of the Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974 as well as action of the respondent State for not returning their lands to which they are entitled as per Act No.20 of 2001.This petition has been admitted after taking into consideration the constitutional and legal issues involved in this petition and we are not inclined to dismiss the same on the technicalities of delay and latches, more particularly when the petitioners are seeking enforcement of their constitutional and legal rights and they belong to the lower strata of the society.

The Hon'ble Supreme Court has enumerated the law with regard to delay and laches in the following pronouncements:

The Hon'ble Supreme Court has held in **Ramchandra Shankar Deodhar and others v. The State of Maharashtra and others**, (1974)1 SCC 317 that for the enforcement and protection of fundamental rights the relief cannot be refused solely on the ground of laches, delay or the like. Their Lordships have held as under:

> **"The first preliminary objection raised on behalf of the respondents was that the petitioners were guilty of gross laches and delay in filing the petition. The divisional cadres of Mamlatdars/Tehsildars were created as far back as 1st November, 1956 by the Government Resolution of that date, and the procedure far making promotion to the posts of Deputy Collector on the basis of divisional select lists, which was a necessary consequence of the creation of the divisional cadre of Mamlatdars/Tehsildars, had been in operation for a long number**

of years, at any rate from 7th April, 1961, and the Rules of 30th July, 1959 were also given effect to since the date of their enactment and yet the petitioner did not file the petition until 14th July, 1969. There was a delay of more than ten or twelve years in filing the petition since the accrual of the cause of complaint, and this delay, contended the respondents, was sufficient to disentitle the petitioners to any relief in a petition under Art. 32 of the Constitution. We do not think this contention should prevail with us. In the first place, it must be remembered that the rule which says that the Court may not inquire into belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay, the court must necessarily refuse to entertain the petition. Each case must depend on its own facts. The question, as pointed out by Hidayatullah, C. J., in Tilockchand Motichand v. H. B. Munshi, (1969) 2 SCR 824 = (AIR 1970 SC 898) "is one discretion for this Court to follow from case to case. There is no lower limit and there is no upper limit....It will all depend on what the breach of the Fundamental Right and the remedy claimed are and how the delay arose." Here the petitioners were informed by the Commissioner, Aurangabad Division, by his letter dated 18th October, 1960 and also by the then Secretary of the Revenue Department in January 1961 that the rules of recruitment to the posts of Deputy Collector in the reorganised State of Bombay had not yet been unified, and that the petitioners continued to be governed by the rules of Ex-Hyderabad State and the Rules of 30th July, 1959 had no application to them. The petitioners were, therefore, justified in proceeding on the assumption that there were no unified rules of recruitment to the posts of Deputy Collector and the promotions that were being made by the State Government were only provisional, to be regularised when unified rules of recruitment were made. It was only when the petition in Kapoor's case was decided by the Bombay High Court that the petitioners came to know that it was the case of the State Government in that petition - and that case was accepted by the Bombay High Court - that the Rules of 30th July, 1959 were the unified rules of recruitment to the posts of Deputy

Collector applicable throughout the reorganised State of Bombay. The petitioners thereafter did not lose any time in filing the present petition. Moreover, what is challenged in the petition is the validity of the procedure for making promotions to the posts of Deputy Collector - whether it is violative of the equal opportunity clause - and since this procedure is not a thing of the past, but is still being followed by the State Government, it is but desirable that its constitutionality should be adjudged when the question has come before the Court at the instance of parties properly aggrieved by it. It may also be noted that the principle on which the Court proceeds in refusing relief to the petitioner on ground of laches or delay is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the delay. This principle was stated in the following terms by Hidayatullah, C. J., in (1969 2 SCR 824 = (AIR 1970 SC 898):

"The party claiming Fundamental Rights must move the Court before other rights come into existence. The action of courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court."

Sikri, J., (as the then was), also re-stated the same principle in equally felicitous language when he said in R. N. Bose .v Union of India, (1970) 2 SCR 697 = (AIR 1970 SC 470): "It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years." Here, as admitted by the State Government in paragraph 55 of the affidavit in reply, all promotions that have been made by the State Government are provisional and the position has not been crystallised to the prejudice of the petitioners. No rights have, therefore, accrued in favour of others by reason of the delay in filing the petition. The promotions being provisional, they have not conferred any rights on those promoted and they are by their very nature liable to be set at naught, if the correct legal position, as finally determined, so requires. We were also told by the learned counsel for the

petitioners, and that was not controverted by the learned counsel appearing on behalf of the State Government, that even if the petition were allowed and the reliefs claimed by the petitioners granted to them, that would not result in the reversion of any Deputy Collector or officiating Deputy Collector to the post of Mamlatdar/Tehsildar; the only effect would be merely to disturb their inter se seniority as officiating Deputy Collectors or as Deputy Collectors Moreover, it may be noticed that the claim for enforcement of the fundamental right of equal opportunity under Art. 16 is itself a fundamental right guaranteed under Article 32 and this Court which has been assigned that role of a sentinel on the qui vive for protection of the fundamental rights cannot easily allow itself to be persuaded to refuse relief solely of the jujune ground of laches, delay or the like."

Their Lordships of the Hon'ble Supreme Court in ***H.D. Vora v. State of Maharashtra and others, (1984) 2 SCC 337*** in view of valid and strong ground of challenge did not dismiss the petition on the preliminary point of laches. Their Lordships have held as under:

"But it was contended on behalf of the appellant that even if the order of requisition was invalid as having been made for a purpose other than a public purpose, the 3rd respondent was not entitled to challenge the same after a lapse of over 30 years and the writ petition should therefore have been dismissed by the High Court. Now if the only ground on which the order of requisition was challenged in the writ petition was that it was not made for a public purpose and was therefore void, perhaps it might have been possible to successfully repel this ground of challenge by raising an objection that the High Court should not have entertained the writ petition challenging the order of requisition after a lapse of over 30 years. But we find that there is also another ground of challenge urged on behalf of the 3rd respondent and that is a very formidable ground to which there is no answer. The argument urged under this ground of challenge was that an order of requisition is by its very nature temporary in character and it cannot endure for an indefinite period of time and the order of requisition in the present case

therefore ceased to be valid and effective after the expiration of a reasonable period of time and that it could not, under any circumstances, continue for a period of about 30 years and hence it was liable to be quashed and set aside or in any event the State Government was bound to revoke the same and to derequisition the flat. This contention has, in our opinion, great force and must be sustained. There is a basic and fundamental distinction recognised by law between requisition and acquisition. The Constitution itself in Entry 42 of List III of the Seventh Schedule makes a distinction between acquisition and requisitioning of property. The original Art. 31 clause (2) of the Constitution also recognised this distinction between compulsory acquisition and requisitioning of property. The two concepts, one of requisition and the other of acquisition are totally distinct and independent. Acquisition means the acquiring of the entire title of the expropriated owner whatever the nature and extent of that title may be. The entire bundle of rights which was vested in the original holder passes on acquisition to the acquirer leaving nothing to the former. Vide : Observations of Mukherjee, J. in Charanjitlal's case 1950 SCR 869 : (AIR 1951 SC 41). The concept of acquisition has an air of permanence and finality in that there is transference of the title of the original holder to the acquiring authority. But the concept of requisition involves merely taking of "domain or control over property without acquiring rights of ownership" and must by its very nature be of temporary, duration. If requisitioning of property could legitimately continue for an indefinite period of time, the distinction between requisition and acquisition would tend to become blurred, because in that event for all practical purposes the right to possession and enjoyment of the property which constitutes a major constituent element of the right of ownership would be vested indefinitely without any limitation of time in the requisitioning authority and it would be possible for the authority to substantially take over the property without acquiring it and paying full market value as compensation. under the Land Acquisition Act, 1894. We do not think that the government can under the guise of requisition continued for an indefinite period of time in substance acquire the property,

because that would be a fraud on the power conferred on the government. If the government wants to take over the property for an indefinite period of time, the government must acquire the property but it cannot use the power of requisition for achieving that object. The power of requisition is exercisable by the government only for a public purpose which is of a transitory character. If the public purpose for which the premises we required is of a perennial or permanent character from the very inception, no order can be passed requisitioning the premises. and in such a case the order of requisition, if passed, would be a fraud upon the statute, for the government would be requisitioning the premises when really speaking they want the premises for acquisition, the object of taking the premises being not transitory but permanent in character. Where the purpose for which the premises are required is of such a character that from the very inception it can never be served by requisitioning the premises but can be achieved only by acquiring the property which would be the case where the purpose is of a permanent character or likely to subsist for an indefinite period of time, the government may acquire the premises but it certainly cannot requisition the premises and continue the requisitioning indefinitely. Here in the present case the order of requisition was made as for back as 9th April 1951 and even if it was male for housing a homeless person and the appellant at that time fell within the category of homeless person, it cannot be allowed to continue for much an inordinately long period as thirty years. We must therefore hold that the order of requisition even if it was valid when made, ceased to be valid and effective after the expiration of a reasonable period of time it is not necessary for us to decide what period of time may be regarded as reasonable for the continuance of an order of requisition in a given case, because ultimately the answer to this question must depend on the facts and circumstances of each case but there can be no doubt that whatever be the public purpose for which an order of requisition is made, the period of time for which the order of requisition may be continued cannot be an unreasonably long period such as thirty years. The High Court was, therefore, in any view of the matter, right in holding that in the circumstances

the order of requisition could not survive any longer and the State Government was bound to revoke the order of requisition and derequisition the flat and to take steps to evict the appellant from the flat and to hand over vacant possession of it to the 3rd respondent."

Their Lordships of the Supreme Court have held in **K. Prasad and others v. Union of India and others,** AIR 1988 SC 535 that having regard to the complicated nature of issues involved, the petitioner should not be put out of court. Their Lordships have held as under:

> **"It has been vehemently contended for the respondents that the writ petition should be dismissed on the ground of laches. It is true that the petitioners have come to court somewhat belatedly. Counsel urged that they had been under a bona fide impression that they had been considered and found ineligible. But this does not appear to be correct. There is on record (at p. 44 of the paper book) a representation made by one of them on 20-4-67 from which it seems that he was even then aware that his name had not been considered at all because of an interpretation that the junior posts were limited to 19 only. Nevertheless, they did not take any steps. The Gujarat, Karnataka and Maharashtra judgments on which the petitioners rely had been rendered in 1978, Jan. 1981 and August 1981 respectively but even after that the petitioners allowed time to lapse. There has therefore been delay on the part of the petitioners in coming to Court. Nevertheless, having regard to the complicated nature of the issues involved, we do not think that the petitioners should be put out of court on the ground of laches. The position as it has now emerged is that all 82 eligible officers as on 1-10-1966 should be considered and not merely some of them. Their suitability should be adjudged. If they are not found suitable, reasons should be given which the U.P.S.C. should be able to consider. If they are found suitable a list of such officers should be drawn up with ranking given to them in the order of preference for the consideration of the U.P.S.C. Since this has not been done the recruitments have to be set**

aside and the matter remanded with directions that it should be finalised as per the Recruitment Rules and in the light of the above discussion."

Their Lordships of the Supreme Court have held in ***M/s Dehri Rohtas Light Railway Company Limited v. District Board, Bhojpur and others, (1992)2 SCC 598*** that for determining the delay and laches the test is not to physical running of time where the circumstances justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground of laches. Their Lordships have held as under:

"The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its on facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ Court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not to physical running of time. Where the circumstances justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground of laches. The decision in Tirlok Chand (AIR 1970 SC 898) (supra) relied on is distinguishable on the facts of the present case. The levy if based on the net profits of the railway undertaking was beyond the authority and the illegal nature of the same has been questioned though belatedly in the pending proceedings after the pronouncement of the High Court in the matter relating to the subsequent years. That being the case, the claim of the appellant cannot be turned down on the sole ground of delay. We are of the opinion that the High Court was wrong in dismissing the writ petition in limine and refusing to grant the

relief sought for. We however agree that the suit has been rightly dismissed."

Accordingly we hold that there is no negligence, laches or acquiescence on the part of the petitioners as may disentitle them to the grant of relief.

4. Whether respondents No.4 to 329 could waive or barter away their fundamental rights after passing of the 2001 Act?

The Constitution Bench of the Hon'ble Supreme Court has held in **Olga Tellis and others v. Bombay Municipal Corporation and others**, AIR 1986 SC 180 that principles of waiver or estoppel are not applicable with regard to fundamental rights. Their Lordships have held as under :

"It is not possible to accept the contention that the petitioners are estopped from setting up their fundamental rights as a defence to the demolition of the huts put up by them on pavements or parts of public roads. There can be no estoppel against the Constitution. The Constitution is not only the paramount law of the land but, it is the source and sustenance of all laws. Its provisions are conceived in public interest and are intended to serve a public purpose. The doctrine of estoppel is based on the principle that consistency in word and action imparts certainty and honesty to human affairs. If a person makes a representation to another, on the faith of which the latter acts to his prejudice, the former cannot resile from the representation made by him. He must make it good. This principle can have no application to representations made regarding the assertion or enforcement of fundamental rights. For example, the concession made by a person that he does not possess and would not exercise his right to free speech and expression or the right to move freely throughout the territory of India cannot deprive him of those constitutional rights, any more than a concession that a person has no right of personal liberty can justify his detention contrary to the terms of Article 22 of the Constitution. Fundamental rights are undoubtedly conferred by the Constitution upon individuals which have to be asserted and

enforced by them, if those rights are violated. But the high purpose which the Constitution seeks to achieve by conferment of fundamental rights is not only to benefit individuals but to secure the larger interests of the community. The Preamble of the Constitution says that India is a democratic Republic. It is in order to fulfil the promise of the Preamble that fundamental rights are conferred by the Constitution, some on citizens like those guaranteed by Articles 15, 16, 19, 21 and 29 and, some on citizens and non-citizens alike, like those guaranteed by Articles 14, 21, 22 and 25 of the Constitution. No individual can barter away the freedoms conferred upon him by the Constitution. A concession made by him in a proceeding, whether under a mistake of law or otherwise. that he does not possess or will not enforce any particular fundamental right, cannot create an estoppel against him in that or any subsequent proceeding. Such a concession, if enforced, would defeat the purpose of the Constitution. Were the argument of estoppel valid, an all-powerful State could easily tempt an individual to forgo his precious personal freedoms on promise of transitory, immediate benefits., Therefore, notwithstanding the fact that the petitioners had conceded in the Bombay High Court that they have no fundamental right to construct hutments on pavements and that they will not object to their demolition after October 15, 1981, they are entitled to assert that any such action on the part of public authorities will be in violation of their fundamental rights. How far the argument regarding the existence and scope of the right claimed by the petitioners is well founded is another matter. But, the argument has to be examined despite the concession."

"The plea of estoppel is closely connected with the plea of waiver, the object of both being to ensure bona fides in day-to-day transactions. In Basheshwar Nath v. Commr. of Income-tax, Delhi, (1959) Supp (1) SCR 528 : (AIR 1959 SC 149), a Constitution Bench of this Court considered the question whether the fundamental rights conferred by the Constitution can be waived. Two members of the Bench (Das C.J. and Kapoor J.) held that there can be no waiver of the fundamental right founded on Article 14 of the Constitution. Two others (N. H.

Bhagwati and Subba Rao, JJ.) held that not only could there be no waiver of the right conferred by Article 14, but there could be no waiver of any other fundamental right guaranteed by Part III of the Constitution. The Constitution makes no distinction, according to the learned Judges, between fundamental rights enacted for the benefit of an individual and those enacted in public interest or on grounds of public policy."

Similarly the Apex Court has held in Nar Singh Pal v. Union of India and others, (2000)3 SCC 588 that the fundamental rights cannot be waived nor there can be any estoppel against exercise of fundamental rights. Their Lordships have held as under:

"The Tribunal as also the High Court, both appear to have been moved by the fact that the appellant had encashed the cheque through which retrenchment compensation was paid to him. They intended to say that once retrenchment compensation was accepted by the appellant, the chapter stands closed and it is no longer open to the appellant to challenge his retrenchment. This, we are constrained to observe, was wholly erroneous and was not the correct approach. The appellant was a casual labour who had attained the "temporary" status after having put in ten years of service. Like any other employee, he had to sustain himself, or, maybe, his family members on the wages he got. On the termination of his services, there was no hope left for payment of salary in future. The retrenchment compensation paid to him, which was only a meager amount of Rs.6350/-, was utilized by him to sustain himself. This does not mean that he had surrendered all his constitutional rights in favour of the respondents. Fundamental Rights under the Constitution cannot be bartered away. They cannot be compromised nor can there be any estoppel against the exercise of Fundamental Rights available under the Constitution. As pointed out earlier, the termination of the appellant from service was punitive in nature and was in violation of the principles of natural justice and his constitutional rights. Such an order can not be sustained. "

In view of the law laid down by the Hon'ble Supreme Court we are of the firm view that neither the petitioners nor respondents No.4 to 329 could barter or waive off their fundamental rights. Respondents No.4 to 329 who belong to the lower strata of society have been made to agree by respondent No.3 supporting his version of the grant of lease in his favour.

5. What is the effect of the amendment carried out by way of Act No. 18 of 1981 in the Principal Act by adding section 8-A?

By way of Act No.20 of 2001 assented by the Governor on 27.9.2001 clause (d) along with the proviso has been incorporated in sub section (2) of section 3 retrospectively i.e. from 29.8.1974. It is a settled rule of interpretation by now that when a subsequent Act amends earlier one in such a way as to incorporate itself or a part of it, into the earlier, the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier act with pen and ink.

Their Lordships of the Supreme Court have held in **Shamrao v. Parulekar and others v. District Magistrate, Thana, Bombay and others**, Air 1952 SC 324 as under:

> **"The construction of an Act which has been amended is now governed by technical rules and we must first be clear regarding the proper cannos of construction. The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier,the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all. This is the rule in England : see Craies on Statute Law, 5th Edition, page 207; it is the law in America: see Crawford on Statutory Construction, page 110; and it is the law which the Privy Council applied to India in 'KESHORAM PODDAR v. NUNDO LAL MALLICK' 54 Ind App 152 (PC) at p. 155. Bearing this in mind, it will be seen that**

> **the Act of 1950 remains the Act of 1950 all the way through even with its subsequent amendments. Therefore, the moment the Act of 1952 was passed and section 2 came into operation, the Act of 1950 meant the Act of 1950 as amended by section 2, that is to say, the Act of 1950 now due to expire on the 1st of October 1952."**

Their Lordship of the Supreme Court have reiterated in **Orient Paper and Industries Ltd. and anr. Vs. State of Orissa and others,** ***1991 supp. (1) SC 81*** the principles laid down in Shah Rao's case*.* Their lordships have reinforced the earlier principle as under:

> **"We see no substance in the contention that a second notification under Section 1(3) of Act 22 of 1981 was required to bring into effect the substituted provisions introduced by Act 4 of 1989. That Act containing the deeming provisions in Section 1(2) is deemed to have come into force on the date on which Act 22 of 1981 came into force i.e., on September 5, 1981 when that Act was notified in the Orissa Gazette. Section 1(3) of Act 22 of 1981 being the governing provision for bringing the statute into force with specific reference to particular produce and particular areas as from specified dates, the statute came into force for specific operation in respect of bamboos I the areas in question not on September 5, 1981, but on October 1, 1988, as specified in the Notification dated September 21, 1988 issued by the Government of Orissa relating to bamboos in exercise of its powers under Section 1(3) of the principal Act. The effect of the deeming provisions in Act 4 of 1989 is to project backwards the provisions of that Amending Act so as to read them into the principal Act (Act 22 of 1981) as if they were part of the principal Act on the date on which it was notified in the Orissa Gazette, i.e., on September 5, 1981. The new provisions are thus, in the absence of any inconsistency or absurdity, deemed to have always formed part of the provisions originally enacted. That being the position in law, as an inevitable corollary, the notification issued under Section 1(3) is deemed to be applicable to the principal Act with the subsequently substituted retroactive provisions written into it; and, no further notification**

under Section 1(3) in respect of Act 4 of 1989 is, therefore, required. To recall the words of Lord Asquith in this context:

> **"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it … The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."**

To contend that a second notification under Section 1(3) of Act 22 of 1981 is required to bring Act 4 of 1989 into force is to cause or permit one's imagination to boggle."

Thus, the amendment carried out in the year 2001 restoring the land to the petitioners and co-villagers has to be given full effect by treating the same to be an integral part of the Principal Act since 1974 as if the land of the petitioners and co-villagers had never been taken over by the State Government.

6. **Whether the H.P. Village Common Lands Vesting and Utilization Act, 1974 is an agrarian piece of legislation and whether granting lease for mining purposes falls out side the scope of agrarian reform and thus not entitled to the protection of Article 31-A of the Constitution of India?**

9. **Whether the Court can read down section 8-A to avoid striking it down, if it is found violative of Articles 14 and 19 of the Constitution of India?**

Since both these questions are inter-linked, the same are taken up together for determination.

To ascertain whether the Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974 is an agrarian piece of legislation or not we

may have to advert to the Statement of Objects and Reasons necessitating the introduction of the Bill. It is evident from the contents of the statement of objects and reasons that since the Punjab Village Common Lands Vesting and Utilization (Regulation) Act, 1961 was not being implemented properly by the Panchayat in respect of leases, an amendment was carried out in the Punjab Common Lands Vesting and Utilization (Regulation) Act, 1964 prohibiting lease in the areas i.e. Kangra, Shimla, Una and Nalagarh and inspite of that amendment things have not improved and irregularities continued to be committed by the Panchayat in leasing out the land. It was to achieve this object that it was considered proper to vest the shamlat land in the State Government for its proper management and utilization. The Himachal Pradesh Legislative Assembly passed the Himachal Pradesh Common Lands Vesting and Utilization Act, 1974 on 11.4.1974. The Act was placed at Serial No.139 of the Schedule-IX, as per 40th Amendment of the Constitution. The Act received the assent of the President of India on 9.8.1974 and the same stood published as Act No.18 of 1974 in Rajpatra Himachal Pradesh Extraordinary. Section 2 of the Principal Act 18 of 1974 defines the expression “inhabitant of an estate,” landless person” means a person who is holding no land for agricultural purposes, whether as an owner or a tenant, earns his livelihood principally by manual labour on land and intends to take the profession of agriculture and is capable of cultivating the land personally. Clause (h) of Section 2 defines the word “land” and “private forests” to have the same meanings as assigned to these expressions in the H.P. Ceiling on Land Holdings Act, 1972. Section 8 of the Principal Act provides that all lands vested in the State Government under the Act shall be utilized for the following purposes:-

(a) an area not less than fifty per cent of the total area vested in the State Government under section 3 of this Act for grazing and other common purposes of the inhabitants of an estate, and

(b) the remaining land.-

(i) for allotment to a landless person or any other eligible person; or

(ii) for allotment of site to a handicapped or houseless person for the construction of a house;

under a scheme to be framed by the State Government by notification in the Official Gazette and the allottee shall pay an amount at the rate of forty-eight times of the land revenue and rates and cesses chargeable on the land allotted to him under the said scheme, either in lump sum or in six monthly instalments not exceeding four."

The State has framed Rules called the Himachal Pradesh Village Common Lands Vesting and Utilization, Rules 1975. It provides that on receipt of the information the Collector shall start a file for demarcation of land for grazing and common purposes and the land to be earmarked for allotable pool and send the same to the Tehsil Revenue Officer for proper demarcation of the land for grazing and common purposes and for allotable pool. The percentage of the land to be reserved for grazing and common purposes is to be fixed in consultation with the estate right holder keeping in view the provisions of section 8. The Tehsil Revenue Officer and the Collector are to be guided for demarcation of shamilat land for the said purposes on the following consideration:

(1) total cattle population of the estate;
(2) the number of eligible persons in the estate;
(3) total acreage of existing cultivated land excluding area under illegal possession/encroachments;
(4) the total area of charand lands;
(5) the land which is used for common purposes like cattle ponds, manure pits, sand bihag, kuhls, paths and the land recorded in the khatounis, of 'Sharai-am' and 'Rafai-am' etc.etc.

The State Government had framed the Scheme called the Himachal Pradesh Village Common Lands Vesting and Utilization, Scheme, 1975. The detailed procedure has been provided under Para 3 of the Scheme for receipt

of the application immediately after the land is mutated in favour of the State Government from eligible persons. The detailed procedure for preparation of statement of land available for allotment and the procedure for allotment of land from the allotable pool has been provided under paras 4 and 5. Para 8 of the Scheme provides for delivery of possession and para 9 provides conditions of allotment.

The State has also framed the Himachal Pradesh .Lease Rules, 1993 in exercise of the powers vested under Section 13 of the Himachal Pradesh, Village Common Lands Vesting and Utilization Act, 1974 and under Section 26 of the Himachal Pradesh Ceiling on Land Holdings Act, 1972. Rule 4 prescribes the purposes for which the lease may be granted and the maximum limit of grant is provided under Rule 5. Rule 6 provides eligibility for the grant of land on lease.

It is evident from the objects and reasons, the reading of the entire Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974 and the Rules framed thereunder, the Himachal Pradesh Village Common Lands, Vesting and Utilization Scheme, 1975 as well as Lease Rules, 1993 as amended from time to time that the Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974 is a piece of Agrarian Legislation.

The land which had vested in the State has been divided into two parts. 50% of the total area vested in the State Government under Section 3 of the Act has been reserved for grazing and other common purposes for the inhabitants of an estate and the remaining for allotment to a landless person or any other eligible person and also for allotment of site to handicapped and houseless person for the construction of a house. The expression ‘other eligible person’ has been added by Section 2 of the Himachal Pradesh, Village Common Lands Vesting and Utilization (Amendment) Act, 1987.

The amendment has been carried out in the Principal Act of the Himachal Pradesh, Village Common Lands Vesting and Utilization Act, 1974 by

way of Himachal Pradesh, Village Common Lands Vesting and Utilization (Amendment) Act, 1981 whereby Section 8-A has been inserted in the Principal Act, namely, Section 8-A to the following effects:

> **"8-A. Utilisation of land for development of the State:- Notwithstanding anything contained in Section 8 of the Act, the State Government may utilize any area of the land vested in it under the Act by lease to any person or by transfer to any Department of the Government in the interests of the development of the State, if the State Government is satisfied that there are sufficient reasons to do so subject to the condition that land for the purposes mentioned in clause (a) of sub-section (1) of section 8 in no case shall be less than fifty present of the land vested in the Government under the Act.**
>
> **Provided that when land is not used by a person for the purpose for which it has been leased, the lease shall stand terminated free from all encumbrances and the Government shall re-enter on the demised premises and lease money, "if paid to the Government, shall be forfeited and no person shall be entitled to any compensation for any improvement made and for any building constructed thereon."**

The vires of section 8-A have been challenged by the petitioners interalia on the grounds that the same is in contravention of the Scheme of the Himachal Pradesh Village Common Lands vesting & Utilization, Act, 1974.. The basic underlined principle for the enactment of the Himachal Pradesh Village Common Lands vesting & Utilization, Act, 1974 is to uplift the persons living in villages by reserving certain portion of the land for grazing and other common purposes and the remaining land for allotment to the landless and other eligible persons. The grazing pastures have been reserved for the inhabitants of the area for the live stock which is also the main stay of the agricultural economy. The remaining land is to be allotted to the landless persons who before the enactment of this act were primarily working as farm labourers. The enactment

had made it possible for the landless persons to be allotted land as per the scheme of the Act for cultivation. Thus the land which has vested in the state under section 3 of the Act is only to be used primarily for agricultural purposes and the same could not be utilized for any other purpose as per section 8-A inserted by way of Act No.18 of 1981.

The Hon'ble Supreme Court has held in the following cases that Recitals in Objects and Reasons of the enactment can be looked into to determine the Will and Policy of the legislature.

The Apex Court has held in **Chern Taong Shang and others v. Commander S.D.Baijal and others**, (1988) 1 SCC 507 that interpreting a statute the Court has to ascertain the will and policy of the legislature as discernible from the object and scheme of the enactment and the language used therein. Their Lordships have held as under:

> **"It is pertinent to mention that in interpreting a statute the Court has to ascertain the will and policy of the legislature as discernible from the object and scheme of the enactment and the language used therein. Viewed in this context it is apparent that the said Act has been made with the sole purpose of preventing poaching of fishes by foreign vessels chartered by Indian citizens within the exclusive economic zone of India as specified in Rule 8(1)(q) of Maritime Zones of India Rules as amended in 1982 (1984?) as well as in breach of the provisions of the said Act and the terms and conditions of permit issued under Section 5 of the said Act."**

The Apex Court in **Shashikant Laxman Kale and another v. Union of India and anothe**r, AIR 1990 SC 2114 has held that for determining the purpose of object of the legislation, it is permissible to look into the circumstances which prevailed at the time when the law was passed and which necessitated the passing of that law and for the limited purpose of appreciating the background and the antecedent factual matrix leading to the legislation, it is

permissible to look into the Statement of Objects and Reasons of the Bill which actuated the step to provide a remedy for the then existing malady. Their Lordships have held as under:

> **"For determining the purpose or object of the legislation, it is permissible to look into the circumstances which prevailed at the time when the law was passed and which necessitated the passing of that law. For the limited purpose of appreciating the background and the antecedent factual matrix leading to the legislation, it is permissible to look into the Statement of Objects and Reasons of the Bill which actuated the step to provide a remedy for the then existing malady. In A. Thangal Kunju Musaliar v. M. Venkitachalam Potti, (1955) 2 SCR 1196: (AIR 1956 SC 246), the Statement of Objects and Reasons was used for judging the reasonableness of a classification made in an enactment to see if it infringed or was contrary to the constitution. In that decision for determining the question, even affidavit on behalf of the State of "the circumstances which prevailed at the time when the law there under consideration had been passed and which necessitated the passing of that law" was relied on. It was reiterated in State of West Bengal v. Union of India, (1964) 1 SCR 371: (AIR 1963 SC 1241) that the Statement and Objects and Reasons accompanying a Bill, when introduced in Parliament, can be used for 'the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation.' Similarly, in Pannalal Binjraj v. Union of India, 1957 SCR 233: (AIR 1957 SC 397) - a challenge to the validity of classification was repelled placing reliance on an affidavit filed on behalf of the Central Board of Revenue disclosing the true object of enacting the impugned provision in the Income-tax Act."**

The Apex Court has held in **Devadoss(dead) by LRs. and another v. Veera Makali Amman Koil Athalur,** AIR 1998 SC 750 that statement of objects and reasons can be used for understanding the background, the

antecedent state of affairs and the evil sought to be remedied by the statute. Their Lordships have held as under:

> **"Question arises naturally whether the Court can refer to the Statement of Objects and Reasons mentioned in a Bill when it is placed before the Legislature and even if it is permissible, to what extent the Court can make use of the same. On this aspect, the law is well settled. In Narain Khamman v. Parguman Kumar Jain, (1985) 1 SCC 1 (8) : (AIR 1985 SC 4), it was stated that though the Statement of Objects and Reasons accompanying a legislative Bill could not be used to determine the true meaning and effect of the substantive provisions of a statute, it was permissible to refer to the same for the purpose of understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute, and the evil which the statute sought to remedy. (See also Kumar Jagdish Chandra Sinha v. Elleen K. Patricia D'Sozarie (1995) 1 SCC 164 : (1994 AIR SCW 4770).**

The Apex Court in **Ashok Leyland Ltd. v. State of T.N. and another**, (2004) 3 SCC-1 has taken into consideration the Statement of Objects and Reasons of the Central Sales Tax Act vis-à-vis the recommendations made by the Law Commission while interpreting Section 6-A of the Act. Their Lordships have held as under:

> **"Having regard to the State of objects and Reasons of the Central Sales Tax Act vis-à-vis the recommendations made by the Law Commission, as referred to hereinbefore, it would appear that Parliament with a view to bring in expediency in such a mater so that the dispute can be determined as expeditiously as possible, amended Section 6-A. Section 6 of the Act provides for liability to tax on inter-State sales in terms whereof every dealer is liable to pay tax thereunder on sales effected by him in the course of inter-State trade or commerce subject to the exception contained in the proviso appended thereto. Such tax would be leviable notwithstanding the fact that no tax is leviable either on the**

seller or the purchaser under the State tax laws of the appropriate State if that sale had taken place inside the State."

Similarly, the Apex Court in **Godawat Pan Masala Products I.P.Ltd. and another v. Union of India and others,** (2004) 7 SCC 68 has taken into consideration the Statement of objects and Reasons as under:

"The aforesaid internal evidence in the statute, by reason of the preamble, and the external evidence in the Statement of Objects and Reasons, indicate that Parliament has evinced its intention to bring out a comprehensive enactment to deal with tobacco and tobacco products. However, the provisions of the statute do not suggest that Parliament had considered it to be expedient to ban tobacco or tobacco products in public interest or to protect public health. Act 34 of 2003 passed by Parliament does not totally ban the manufacture of tobacco or tobacco products Section 6 merely prohibits sale of cigarettes and tobacco products to a person under the age of eighteen years. There are stringent provisions made in the Act containing the prohibition of advertisement of cigarettes and tobacco products. Section 3(p) defines the expression "tobacco products" as the products specified in the Schedule. Entry 8 of the Schedule to the Act reads "pan masala or any chewing material having tobacco as one of its ingredients (by whatever name called)." Thus, pan masala or any chewing material having tobacco is also one of the products in respect of which the Act could have imposed a total prohibition, if Parliament was so minded. On the other hand, there is only conditional prohibition of these products against sale to persons under eighteen years of age".

The Hon'ble Supreme Court in the following judgments has touched and discussed the expression 'Agrarian Reforms'

The Apex Court has held in (1) **Ranjit Singh and others (In C.A.No.743 of 1963) (2) Major (now Lt. Col.) Micheal A.R.Skinner and**

others (C.A.Nos. 553-554 of 1962) v. The State of Punjab and others, AIR 1965 SC 632 that the scheme of rural development today envisages not only equitable distribution of land so that there is no undue imbalance in society resulting in a landless class on the one hand and a concentration of land in the hands of a few, on the other, but envisages also the rising of economic standards and bettering rural health and social conditions. Their Lordships have held as under:

> **"The High Court was also right in the view that the proposed changes in he shamlat deh and abadi deh of rural areas were included in the general scheme of planning of rural areas and the productive utilization of vacant and waste lands. The scheme of rural development today envisages not only equitable distribution of land so that there is no undue imbalance in society resulting in a landless class on the one hand and a concentration of land in the hands of a few, on the other, but envisages also the rising of economic standards and bettering rural health and social conditions. Provisions for the assignment of lands to Village Panchayat for the use of the general community, or for hospitals, schools, manure pits, tanning grounds etc. ensure for the benefit of rural population and must be considered to be essential part of the redistribution of holdings and open lands to which no objection is apparently taken. If agrarian reforms are to succeed, mere distribution of land to the landless is not enough. There must be a proper planning of rural economy and conditions and a body like the village Panchayat is best designed to promote rural welfare than individual owners of small portions of lands. Further, the village Panchayat is an authority for purposes of Part III as was conceded before us and it has the protection of Art. 31-A because of this character even if the taking over of shamlat deh amounts to acquisition. In our opinion, the High Court was right in deciding as it did on this part of the case.**

The Full Bench of Kerala High Court has held in ***V.N. Narayanan Nair and others Versus State of Kerala and others***, AIR 1971 Kerala 98 that section 106 and 106-A which made the special provisions regarding leases for commercial or industrial purposes and buildings used by Kudikidappukars for commercial or industrial purposes would appear to be outside the scope of agrarian reform and, therefore, not entitled to protection of Article 31-A. Their Lordships have held as under:

> **"Prima facie sections 106 and 106-A which make special provisions regarding leases for commercial or industrial purposes and buildings used by Kudikidappukars for commercial or industrial purposes would appear to be outside the scope of agrarian reform and, therefore, not entitled to protection of Article 31-A. But here, as in the case of many of the other provisions which have been assailed, no petition has made out how he is aggrieved and therefore we think it necessary to say anything about the validity of these sections."**

Justice Mathew has made these observations while interpreting section 96 of the Agrarian Reforms Act (1 of 1964):

> **"Section 96 of the Act says that the Land Board shall after reserving in each village the lands necessary for public purposes, assign on registry the remaining Lands vested in the Government under section 86 or 87, as specified in the section. It was argued that reservation of land for public purpose has no relation to agrarian reform, but is a colourable device for acquiring property for public purposes not relating to agrarian reform without paying the compensation as provided under Article 31 (2). But if the provision is read as providing for reservation of land for public purposes in relation to agrarian reform, it would be immune from attack. I think, it is permissible to read the provision in this restricted manner. It is a general rule of construction that a word or expression though wide in its natural and ordinary connotation must be restricted to the**

purpose of the statute as evidenced by the context. Besides, the rule governing the separability of two, sections of a statute in principle is applicable where a single section of a statute attempts or purports to cover two entirely distinct and separable classes of cases, one properly and the other improperly, and that it may be upheld as to the class which constitutionally may be thus covered, even though condemned as to the other."

The Hon'ble Supreme Court in the Malankara Rubber and Produce Co. Ltd. etc. versus State of Kerala and others etc. AIR 1972 SC 2027 has upheld the judgment of the Kerala High Court. Their Lordships of the Hon'ble Supreme Court have held as under:

"It was argued that although the Kerala High Court in Narayan Nair's case, AIR 1971 Kerala 98 turned down the contention that under the wide language of S. 96 (1) "the reservation for public purpose could be for any purpose whatever including one entirely unconnected with agriculture such as for example, an "industrial undertaking" on the ground that "having regard to the context in which it appears the reservation for public purposes under that sub-section can only be for public purposes relating to agriculture, such as the provisions for threshing floors or the construction of irrigation or drainage channels or the construction of houses for agricultural labourers", the new sub-sec. (1A) shows that the State did not intend to be bound by the construction placed upon S. 96 by the High Court and made it clear that the section was not to be so read down thereby keeping in its hand the matter of reservation of land for public purpose of any kind not limited to agrarian reform.

The argument though forcefully put cannot be accepted. The object of both the 1964 Act and the present Act was to effect agrarian reform, which only can give to the statue the protection of Article 31-A. This was made clear by the High Court in its judgment and in our view rightly, by reading down the said provision as to reservation for public

> **purposes to reservation, for purposes falling within the expression "agrarian reform". By enacting sub-s. (1-A) despite the said construction by the High Court it appears that the intention of the State Legislature was to overrule legislatively the view expressed by the High Court and not to be bound by the interpretation placed by the High Court. By so doing, the new sub-section has once again been made prone to the same constitutional challenge. We have no doubt that the sub-section is couched in too general and wide a language capable of including public purposes which would not be those falling within the expression 'agrarian reform'. There was therefore considerable force in the contention of counsel for the petitioners. The fact however that the Legislature has once again used the same general language in spite of the aforesaid interpretation given by the High Court need not lead us to strike down wholly the sub-section. In accordance with the well recognized canon of construction adopted in a number of cases decided by this Court we read the sub section to mean only reservation of the land for such public purposes as would bring about agrarian reform inasmuch as any acquisition under Art. 31-A for any public purpose other than that falling under the expression "agrarian reform" cannot be considered as having the protection of that Article."**

The Apex Court has held in **Kh. Fida Ali and others v. State of Jammu and Kashmir**, AIR 1974 SC 1522 that besides the availability of land for the purpose, limited in scope in the nature of things, the scheme has to fit in with the local conditions, variability of climate, rain-fall, peculiarity of terrain, suitability and profitability of multiple crop patterns, vulnerability to floods and so many other factors in formulating a scheme of agrarian reforms suitable to a particular State. Their Lordships of the Supreme Court have held as under:

> **"On the other hand, the predominant object underlying the provisions of the Act is agrarian reforms. Naturally cannot take the same pattern throughout the country.**

> **Besides the availability of land for the purpose, limited in scope in the nature of things, the scheme has to fit in with the local conditions, variability of climate, rain-fall, peculiarity of terrain, suitability and profitability of multiple crop patterns, vulnerability to floods and so many other factors in formulating a scheme of agrarian reforms suitable to a particular State. While a modest beginning is made with the land at disposal, modern methods of mechanization and other improvements can be resorted to with the help of the State machinery available to the tillers of the soil. Such details can be worked out gradually by various processes in the course of implementation of the provisions of the Act and the rules which definitely provide sufficient elasticity. We are of opinion that the impugned Act has been passed with the definite object of agrarian reforms and cannot be successfully challenged on the score of violation of Article 14, Article 19 and Article 31 in view of the provisions of Article 31 A. The application, therefore, fails and is dismissed. The parties will pay and bear their own costs."**

The Apex Court has held in **Civil Appeals Nos.1398, 1416 and 1417 of 1972: State of Kerala and another v. The Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. etc.**, AIR 1973 SC 2734 that the objectives of increasing agricultural production and promotion of welfare of the agricultural population are clearly elements of agrarian reform. Their Lordships have held as under:

> **"What then is the scheme of agrarian reform envisaged in the impugned Act? The title of the Act shows that it is an Act to provide for the vesting in the government of private forests for the assignment thereof to agriculturists and agricultural labourers for cultivation. The preamble shows that such private forests which the legislature thought to be agricultural lands in the sense, already explained should be so utilized as to increase their agricultural production in the State and to promote the welfare of the agricultural population in the State. It is further stated in the Preamble that in order to give effect to the above objects it was necessary that the private forests should vest in the Govt.**

The objectives of increasing the agricultural production and the promotion of the welfare of the agricultural population are clearly a predominant element in agrarian reform. How these objectives are to be implemented are generally stated in Sections 10 and 11. All the private forests, after certain reservations, are to be assigned to agriculturists or agricultural labourers and to the proper classes of the rural population desiring bona fide to take up agriculture as a means of their livelihood. The reservation in respect of certain portions of the forests is also made in the interest of the agricultural population because the section says that the reservations will be such as may be necessary for purposes directed towards the promotion of agriculture or welfare of the agricultural population or for purposes ancillary thereto. Section 11 further provides that after making the necessary reservations the scheme for the assignment of the private forests to the various beneficiaries described in Section 10 shall as far as may be, be completed within two years from the date of the publication of the Act. The conditions and restrictions under which the assignments are to take place have to be prescribed by rules. We understand that in view of the stay granted by the courts, the rules have not been framed. But it is clear that the rules will have to be framed forthwith because of the urgency of the matter as seen in Section 11 and these rules will undoubtedly unfold the details of the scheme generally envisaged in Section 10. It would not be necessary to emphasize that the rules will have to be consistent with the purposes of the Act. In Statutes of this nature, provision can only be generally made to indicate the broad details of the scheme for agrarian reform and that is what is done in the Act. In Balmadies case referred to above no such scheme had been envisaged. But in another case namely the Kanan Devan Hills Produce v. state of Kerala, (1972) 2 SCC 218 = (AIR 1972 SC 2301) the Statute viz. The Kannan Devan Hills (Resumption of Lands) Act 5 of 1971 disclosed a scheme in Section 9 which is very similar to our own Section 10 of the impugned Act. Section 9 of that act was as follows:

"9 Assignment of lands.—(1) The Government shall, after reserving such extent of the lands, the possession of which has vested in the government under sub-clause (1) of Section 3…., as may be necessary for purposes directed towards the promotion of agriculture or the welfare of the agricultural population to be settled on such lands, assign on registry the remaining ands to agriculturists and agricultural labourers in such manner, on such terms and subject to such conditions and restrictions, as may be prescribed."

That scheme as envisaged in this section was upheld by this court a scheme for agrarian reform and we do not see any good reason why we should take a different view with regard to the scheme envisaged in section 10 of the impugned Act. `

"The concept of agrarian reform is a complex and dynamic one promoting wider interests than conventional reorganization of the land system or distribution of land. It is intended to realize the social function of the land and includes--- we are merely giving, by way of illustration, a few familiar proposals of agrarian reform—creation of economic units of rural production, establishment of adequate credit system, implementation of modern production techniques, construction of irrigation systems and adequate drainage, making available fertilizers, fungicides, herbicides and other methods of intensifying and increasing agricultural production, providing readily available means of communication and transportation, to facilitate proper marketing of the village produce, putting up of silos, warehouses etc. to the extent necessary for preserving produce and handling it so as to bring it conveniently within the reach of the consumers when they need it, training of village youth in modern agricultural practices with a view to maximizing production and help solve social problems that are found in relation to the life of the agricultural community. The village man, his welfare, is the target."

Their Lordships of the Supreme Court in **State of W.B. vs. Ashish Kumar Roya and others,** (2005)10 SCC 110 have considered the term 'agrarian' as under:

> **"In the instant case, the Tribunal has been constituted under the West Bengal Tenancy Tribunal Act and it has been given the jurisdiction to entertain disputes with regard to the five specified acts. Learned counsel for the respondents argues thus: the tribunal contemplated under Article 323B clause (1) read with clause (2) (d) can only be a tribunal for deciding disputes or matters with respect to land reforms by way of acquisition of any estate as defined in Article 31A. Article 31A itself defines the expression 'estate' in clause (2). Both Article 31A and the definition of 'estate' in clause (2) of Article 31A have received judicial interpretation by Constitutional Benches of this Court which have uniformally taken the view that the protection of Article 31A is available only to laws which are intended to carry out agrarian reforms. The predominant purpose of sub-clause (d) of clause (2) of Article 323B is to constitute a tribunal only with respect to disputes pertaining to laws carrying out agrarian reforms. Out of the 5 specified Acts, the West Bengal Land Reforms Act, 1955, the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 and the West Bengal Land Holding Revenue Act, 1979 have no connection whatsoever with agrarian reforms. Therefore, the Tribunal constituted to deal with these Acts cannot be a tribunal within the meaning of Article 323B(2)(d) of the Constitution. Hence, the learned counsel contends that the impugned Act is not immune from challenge on the ground of violation of the Constitutional provisions.**
>
> **The argument is unacceptable for three reasons. The first is the fallacious assumption that in order to be a valid tribunal constituted under Article 323B(1) and**

323B(2)(d), the tribunal must necessarily deal with laws for agrarian reforms. In our view, the reading of the expression 'estate' from clause (2) of Article 31A into Article 323B (2)(d) is only for the purpose of enumeration. Instead of repeating the entire definition contained in clause (2) of Article 31A in sub-clause(d) of 323B,the framers of the Constitution merely indicated that the word 'estate' would have the same meaning as in Article 31A. The reference to the definition of 'estate' in Article 31A made in Article 323B (2) (d) serves no other purpose.

Secondly, the concept of 'agrarian reform' is not confined only to agriculture or its reform. In the words of Krishna Iyer,J. in his concurring judgment in State of Kerala and another vs. The Gwalior Rayon Silk Mfg (Wvg.) Co. Ltd. Etc. (AIR 1973 SC 2734) (para 30):

"30. The concept of agrarian reform is a complex and dynamic one promoting wider interests than conventional reorganization of the land system or distribution of land. It is intended to realize the social function of the land and includes -- we are merely giving, by way of illustration, a few familiar proposals of agrarian reform -- creation of economic units of rural production, establishment of adequate credit system, implementation of modern production techniques, construction of irrigation systems and adequate drainage, making available fertilizers, fungicides, herbicides and other methods of intensifying and increasing agricultural production, providing readily available means of communication and transportation, to facilitate proper marketing of the village produce, putting up of silos, warehouses etc. to the extent necessary for preserving produce and handling it so as to bring it conveniently within the reach of the consumers when they need it, training of village youth in modern agricultural practices with a view to maximizing production and help solve social problems

that are found in relation to the life of the agricultural community. The village man, his welfare, is the target."

Further, in testing as to whether the law was intended for agrarian reform, the Court is required to look to the substance of the act and not its mere outward form.

Thirdly, the contention also proceeds on a misreading of Article 323B (2) (d). Under clause (1) the State Legislature is empowered to make a law with regard to entry 18 in List II of the 7th Schedule which reads

"Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans, colonization".

Sub-clause (d) of Article 323 B is not confined to land reforms by acquisitions of estates or extinguishment or modification of any such rights for the clause ends with the phrase "or in any other way", which are wide enough to accommodate any other type of law which is intended for "land reforms".

We are, therefore, unable to accept the contention of the learned counsel that in order to fall within the protection of umbrella of Article 323B, the tribunal must have been constituted only with regard to disputes arising under any law intended for agrarian reform. As long as it is a law with respect to "land reforms", it is sufficient to fall within the ambit of sub-clause (d) of clause (2) of Article 323B of the Constitution.

"Agrarian reforms", itself is a wide concept and we do not see why the objects attempted to be fulfilled by the specified Acts would not fall within the ambit of this compendious term. Looking at the preambles and the schemes of the five specified Acts, we are unable to find fault with the reasoning of the learned single Judge that the

> **tribunal constituted to deal with the disputes arising under the said specified Acts was very much a tribunal within the meaning of Article 323-B of the Constitution".**

In view of the above discussion, it is held that insertion of Section 8-A by Act No.18 of 1981 in the Principal Act No. 18 of 1974 is against the will and intention of the legislature. The Principal Act No.18 of 1974 has been enacted to achieve agrarian reforms to ameliorate the sufferings of rural masses by distribution of the land as well as planning schemes for their upliftment. It is in this background that we have to consider whether lease could be made in favour of respondent No.3 in the year 2001 by invoking Section 8-A. The answer is in the negative. The grant of lease in favour of respondent no.3 by no stretch of imagination can be termed as a step towards agrarian reforms. The fact of granting lease in favour of respondent No.3 is only to benefit a single individual at the cost of the petitioners and other co-villagers.

The submissions of Mr. Bhupender Gupta learned counsel that the respondent No.3 had engaged 50 labourers and had also invested huge amount besides giving employment by providing funds to the villagers is of no significance. The development even as per Section 8-A will mean in those areas which are akin to agricultural pursuits unlike mining activities being carried out by respondent No.3.

We are also fortified in taking the view that mining activities are unrelated to agrarian reform on the basis of the expression "common purposes" being now defined as per the Amendment Act, 2001 whereby 'common purposes' have been added after clause (a) in the following manner:

> **"(a-1) "Common purposes" means and includes grazing, collection of fuel wood and tree leaves for fodder, school buildings, Panchayat Ghars, Mahila Mandal Bhawans, School Playgrounds, Community Halls, Janj Ghars, Dispensaries, Government Offices, Kisan Mandies, tree plantation under**

various State Government Schemes and any other public facilities."

Thus, all the developmental activities are required to be relatable to the purposes mentioned in 'common purposes' and this definition of 'common purposes' came by way of insertion of clause (a-1) is in conformity with the expression agrarian reform. The word development cannot be given an extensive meaning so as to include other activities like mining etc. Even the word industry and tourism mentioned in the Statement of Objects and Reasons for bringing out the Act No. 18 of 1981 have to be given a very very restrictive meaning. The industries could be only agro based and the tourism could only be relatable to village tourism. We are also of the view that the H.P. Village Common Lands Vesting and Utilization Act, 1974 is based on the principle 'land for the tiller' and the production should also be in the hands of the actual producer. The other motivating factor of agrarian reform is to give advancement or fillip to agricultural groups as well as relatable to the distribution of landed property.

The State at one time has also taken into consideration the damage caused to the environment and ecology of District Sirmaur as well as danger of disturbances to the stability of hill slopes. The State Government had issued notification on 8th December, 1986. The text of the notification reads thus:

"Whereas it is felt that there has been haphazard and excessive growth of mining of minerals in District Sirmaur, H.P. causing the danger of disturbances to the stability of hill slopes resulting irreversible degradation of environment and upset the eco-system of the area; and

Whereas it is found imperative that detailed studies are undertaken for proving the deposits for the quality and quantity, geological formations and structure in surrounding areas, physiography of the area and the land use pattern of the area which can be put after the mineral is removed from the area; and

Now , therefore, in exercise of the powers conferred by rule 58 of the Mineral Concession Rules, 1960, the Governor, Himachal Pradesh is pleased to reserve entire area comprised in District Sirmaur of Himachal Pradesh, except the area already granted for Mining Lease/Prospecting Licence, for exploitation by the Government, with effect from 5th December, 1986.

However, the applications filed and pending as on 5.12.1986 will be decided on merits."

The matter also needs consideration from another angle. It is evident from the language employed in section 8-A of the Act that the Government could utilize any area of the land vested in it under the Act by lease to any person or by transfer to any department of the Government in the interests of the development of the State, if the State Government or the Officer authorized by it is satisfied that there are sufficient reasons to do so subject to the condition that land for the purposes mentioned in clause (a) of sub-section (1) of section 8 in no case shall be less than fifty percent of the land vested in the Government under the Act. Clause (a) of sub-section (1) of Section 8 of the Principal Act reads as under:

"an area not less than 50% of the total area vested in the State Government under section 3 of the Act for grazing and other common purposes of the inhabitants of an estate."

The amendment was carried out by way of Act No.10 of 1987 whereby clause (b) of the Principal Act was substituted in the following manner:

"(b) the remaining land-

(i) for allotment to a landless person or any other eligible person; or

(ii) for allotment of site to a handicapped or houseless person for the construction of a house;

under a scheme to be framed by the State Government by notification in the Official Gazettee and the allottee shall pay an amount at the rate of forty-eight times of the land revenue and rates and cesses chargeable on the land allotted to him

under the said scheme, either in lump sum or in six monthly installments nor exceeding four."

By way of Act No. 10 of 1987, the word 'handicapped person', as well as 'other eligible person' were also defined as under:

"(dd) "other eligible person" means a person,-

(i) who, holding land for agricultural purposes less than an acre whether as an owner or a tenant, earns his livelihood principally by manual labour on land and intends to take the profession of agriculture and is capable of cultivating the land personally;

(ii) whose father is not alive; and

(iii) whose annual income from all sources does not exceed Rs. 3000/-;

and shall not include a person who holds a share or a portion of an estate jointly owned or cultivated by two or more persons."

It is thus evident from the Statement of Objects and Reasons that bringing of Act No. 10 of 1987 was necessitated to define the expression 'eligible person', which was not earlier defined. The Statement of Objects and Reasons reads thus:

"In 1975, a massive programme of allotment of land was launched by the Government under the 20-Point Programme enunciated by the Prime Minister. Under this programme, all the landless agricultural labourers who had no land or had land less than an acre, were to be allotted land upto an acre. The latter category was called. "other eligible persons".

Among the sources from which land was and is being allotted to both the categories, is the village common land vested in the Government under the Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974.

The definition of the expression "landless person" as given in that Act at present, was supplemented by instructions issued in October, 1975 laying down that a

person having his father alive and income exceeding Rs. 3,000/- per annum from all sources shall not be a landless person for the purposes of allotment of land.

The allotment of land has been made in the light of these guidelines and allotments found to have been made in violation of these administrative instructions had been cancelled by the competent authority.

This arrangement has, however, not found favour with the Civil Courts which have held that the definition of the expression "landless person" as given in the Act does not embody the conditions prescribed under the administrative instructions. It has, therefore, become necessary to amend the above definition and make consequential provisions to cancel the allotment of lands obtained by certain unscrupulous persons by concealing facts at the relevant time.

Besides, the State Government has also decided that a handicapped person having 50% or more disability should be granted house site for construction of his house. Then there may be other purposes also for which land is often required. At present there is no enabling provision in the Act on this score. Section 8 has, therefore, to be amended suitably.

This Bill seeks to achieve the aforesaid objectives."

It is thus evident from the scheme of the Act that 50% of the land was reserved for the purpose of grazing and other common purposes of the inhabitants of the estate and the remaining 50% was to be allotted to a landless person or any other eligible person as well as for allotment of site to handicapped or houseless person for the construction of a house. The land which as per the Amendment Act No. 18 of 1981 is being allotted for developmental activities was the remaining 50% which was reserved for landless person or any other eligible person. The expression "landless person" and other "eligible person" had been defined. It is clear from the combined reading of both the expression as defined under section 2 (c) (dd) that the land was to be allotted to agricultural labourer, who had no land or had land less

than an acre. The utilization of 50% land, which was to be allotted to the landless and other eligible persons for mining activities will run counter to the spirit of the Principal Act. It is not that the land to be allotted to the landless or other eligible person has drastically been reduced but the same has also been put to other non-agricultural purposes i.e. mining activities etc. This was never the intention of the legislature at the time of the enactment of the Principal Act. These observations also strengthen our findings that the land which has been vested in the State under section 3 of the Principal Act, could not be permitted to be used for mining purposes.

It is in this backdrop that we have to consider whether section 8-A inserted in the Principal Act by way of Act No. 18 of 1981 is unconstitutional being violative of Articles 14 and 19 of the Constitution of India. It is reiterated that the H.P. Village Common Lands Vesting and Utilization Act, 1974 is an agrarian piece of legislation and it was for this reason alone that it was put at Sr. No. 139 in Schedule-IX of the Constitution of India. The Amendment Act 18 of 1981 whereby section 8-A has been inserted in the Principal Act has never received the assent of the President of India and its vires can be challenged being violative of the fundamental rights enshrined under Part-III of the Constitution of India. The land which had vested in the State in view of the Principal Act, 1974 was reserved for grazing pasture as well as for allotment to landless and other eligible persons. The landless and other eligible persons are the persons who are primarily dependent on agriculture labour and ancillary activities. Section 8-A though talks of utilization of the land for development but read as a whole it runs contrary to the spirit of the Principal Act. Section 8-A is unreasonable and arbitrary, thus violative of Article 14 as well as Article 19 of the Constitution of India. We are also fortified in taking this view for declaring Section 8-A ultra vires of the Constitution on the basis of definition given to the expression “common purposes” by way of amendment carried out in the year 2001. The mining activities could never be treated as part of agrarian reform as

projected by the respondents at the time of hearing of the petition. The grant of mining lease in favour of respondent No.3 is alien to the spirit of the Principal Act, 1974. The petitioners and other co-villagers are bound to get back their land which had earlier been vested in the State in the year 1974 after the insertion of clause (d) in sub-section (2) of Section 3 with effect from 1974. Though in clear terms we have declared Section 8-A of the Amendment Act, 1981 unconstitutional, but we can avoid its striking down by reading down Section 8-A harmoniously with other sections of the Principal Act, 1974. The intent and the will of the Legislature is to protect the rights of the tillers of the land as is evident from the main Objects and Reasons discussed here in above. Striking down of Section 8-A can be saved by this Court by giving a very very restrictive meaning to the expression utilization of land to the development by confining it to the agricultural pursuits/occupation and by not agreeing to the submissions made by the learned Advocates appearing on behalf of the respondents to give the expression 'development' extensive meaning. The principles of reading down have been succinctly explained by the Hon'ble Supreme Court in **Calcutta Gujarati Education Society and another v. Calcutta Municipal Corpn. and others**, (2003)10 SCC 533. Their Lordships have held as under:

> **"The rule of "reading down" a provision of law is now well recognised. It is a rule of harmonious construction in a different name. It is resorted to smoothen the crudities or ironing the creases found in a statute to make it workable. In the garb of 'reading down', however, it is not open to read words and expressions not found in it and thus venture into a kind of judicial legislation. The rule of reading down is to be used for the limited purpose of making a particular provision workable and to bring it in harmony with other provisions of the statute. It is to be used keeping in view the scheme of the statute and to fulfil its purposes. See the following observations of this Court in the case of BR Enterprises vs. State of UP [1999(9) SCC 700]:-**

"First attempt should be made by the courts to uphold the charged provisions and not to invalidate it merely because one of the possible interpretation leads to such a result, howsoever attractive it may be. Thus, where there are two possible interpretations, one invalidating the law and the other upholding, the latter should be adopted. For this, the courts have been endeavouring, sometimes to give restrictive or expansive meaning keeping in view the nature of legislation, may be beneficial, penal or fiscal etc. Cumulatively, it is to sub-serve the object of the legislation. Old golden rule is of respecting the wisdom of legislature, that they are aware of the law and would never have intended for an invalid legislation. This also keeps courts within their track and checks individual zeal of going wayward. Yet in spite of this, if the impugned legislation cannot be saved the courts shall not hesitate to strike it down. Similarly, for upholding any provision, if it could be saved by reading it down, it should be done, unless plain words are so clear to be in defiance of the Constitution. These interpretations spring out because of concern of the courts to salvage a legislation to achieve its objective and not to let it fall merely because of a possible ingenious interpretation. The words are not static but dynamic. This infuses fertility in the field of interpretation. This equally helps to save an Act but also the cause of attack on the Act. Here the courts have to play a cautious role of weeding out the wild from the crop, of course, without infringing the Constitution. For doing this, the courts have taken help from the Preamble, Objects, the scheme of the act, its historical background, the purpose for enacting such a provision, the mischief, if any which existed, which is sought to be eliminated. The principle of reading down, however, will not be available where the plain and literal meaning from a bare reading of any impugned provisions clearly shows that it confers arbitrary, uncanalised or unbridled power."

On behalf of the Corporation learned counsel placed heavy reliance on paragraph 16 of the Judgement of this Court in Central Bank of India (supra). It is argued that comparable provisions of Bombay Act were examined and contention was rejected that right of appeal to tenants, sub-tenants or occupiers on pre-deposit of tax for the entire property or premises is inequitable and virtual denial of right of appeal.

In view of the law laid down by the Hon'ble Supreme Court and after harmonising Section 8-A of the Amendment Act, 1981, and other sections of the Himachal Pradesh Village Common Lands Vesting and Utilization Rules, 1975 , the Himachal Pradesh Lease Rules, 1993 and the Himachal Pradesh Village Common Lands Vesting and Utilization Scheme, 1975, we read down Section 8-A instead of striking it down by declaring that the mining activities/operations etc., cannot be termed as developmental activities as mentioned in section 8-A and the action of the State to grant lease to respondent No.3 from the allotable pool is contrary to the Principal Act. Section 8-A will not get immunity under Article 31-A if the developmental activities carried out by the State are against the agrarian reforms. It is for this reason that the Court has to give very restrictive meaning towards developmental activities by restricting the word "development" to agriculture pursuits to achieve the purpose of this Statute as evidence by the context.

7. Whether the immunity enjoined by the Principal Act being placed in Schedule-IX can be extended to section 8-A added in the year 1981?

As regards an Act contained in Schedule-IX, an amendment cannot be given retrospective effect because that would involve the amendment of Constitution and it can be amended only by the Parliament as provided in Article 368. Any amendment of an Act in Schedule-IX must, therefore, stand the test of fundamental rights unless it is otherwise protected, for example Article 31-A. The Hon'ble Supreme Court in ***Ramanlal Gulabchand Shah etc. etc. v. The State of Gujarat and Others, AIR 1969 SC 168*** has held as under:-

> **"The first question to consider is the vires of the addition to S. 65 by the Amending Act, which addition has been shown in the section quoted already. This matter has to be considered with reference to Arts. 31-A and 31-B read with the Ninth Schedule. The protection is claimed on the basis of these two articles by the State. Article 31-B no doubt gives protection to all statutes listed in Schedule IX of the Constitution and this Act is so listed. But it was listed before the**

amendment of S. 65 and that amendment cannot be said to have been considered when the Amendment of the Constitution was made. That Amendment if accepted as unassailable will have the indirect effect of amending the original Schedule IX by including something in it which was not there before. This is undoubtedly beyond the competence of any State legislature. The argument of the learned Attorney General that the general scheme of the Preamble and the provisions of S. 44 made applicable by S.65 (2) both of which have the protection of Art. 31-B must give protection is fallacious. Even if the preamble and S. 44 could be read (and we do not decide that they can be so read) to give validity it is clear that the preamble talked only of landholders and the addition of the words to S. 65 is intended to apply the principle to non-landholders. Similarly the provisions of S. 44 under the unamended Act, could not have been made applicable to such landholders. The amendment of S. 65 was really carrying the Act into new fields and not being considered as an amendment of the Constitution, how can it claim the protection given to the unamended Act ? Therefore Art. 31-B and the Ninth Schedule cannot be called in aid."

Similarly, their Lordships of the Hon'ble Supreme Court have held in ***The State of Orissa v. Chandrasekhar Singh Bhoi, etc., AIR 1970 SC 398*** that the amending Act passed after the enactment of the Constitution (17th Amendment) Act, 1964 did not qualify for the protection of Article 31-B. Their Lordships have held as under:-

"By the amendments made in the Constitution by the 17th Amendment Act the principal Act is incorporated in the Ninth Schedule to the Constitution with effect from June 20, 1964. The Act is therefore not liable to be attacked on the plea that it is inconsistent with or takes away or abridges any of the fundamental rights conferred by Part III of the Constitution. But the power of the competent Legislature to repeal or amend the Act incorporated in the Ninth Schedule is not thereby taken away. The amending Act passed after the enactment of the Constitution (Seventeenth Amendment) Act, 1964 does not therefore qualify for the protection of Article 31-B. See Ramanlal Gulabchand Shah v. State of Gujrat, Civil Appeals Nos. 1751 to 1773 of 1966, D/- 19-4-1968 = (AIR 1969 SC 168); Sri Ram Narain

Medhi v. State of Bombay, (1959) Supp (1) SCR 489 = AIR 1959 SC 459). This position is not disputed."

The full Bench of Kerala High Court in ***V.N. Narayanan Nair and Others v. State of Kerala and Others, AIR 1971 Kerala 98*** after relying upon AIR 1978 SC 168 and AIR 1978 SC 398 has held that though the original Act having been included as Item No.39 in Schedule-IX of Constitution gets protection of Article 31-B, subsequent amending Acts viz.; Act 12 of 1966, Act 9 of 1967 and Act 35 of 1969 not having been so included in Schedule-9 cannot get protection of Article 31-B. Their Lordships have held as under:-

"The Kerala Land Reforms Act, 1963 (Act 1 of 1964) as originally enacted (the original Act as we shall call it) finds a place a place in the Ninth Schedule to the Constitution – see Item 39 – and therefore has the protection of Article 31-B. It has been amended three times, first by Act 12 of 1966, then by Act 9 of 1967, and now by Act 35 of 1969, the amendments made by the last mentioned Act (which we shall call the amending Act) being far-reaching. (To the 132 sections in the original Act, over 50 new sections have been added while over 60 sections have been amended. To the 62 definitions 10 have been added while 20 have been amended. The amended Act is therefore virtually a new piece of legislation). The first of these was enacted by the President while the remaining two have received his assent – it has been contended not in the free and proper exercise of his judgment, but, of course, we cannot go into that – but none of them has been included in the Ninth Schedule. Therefore, such of the provisions of the amended Act (or simply, the Act) as are not part of the original Act (whether they be entirely new provisions or provisions in substitution) cannot claim the protection of Article 31-B see Ramanlal v. State of Gujarat, AIR 1969 SC 168 and State of Orissa v. Chandrasekhar Singh Bhoi, 1970-1 SCWR 306 = (AIR 1970 SC 398). The petitioners in these forty applications under Article 226 of the Constitution are land-holders, and, between them, they assail virtually all the material provisions of the amended Act as violative of Articles 14, 19, 25, 26 and 31 of the Constitution – many of them seek the striking

> **down of the Act in entirety on that score. The principal, indeed almost the sole, defence is that the provisions are protected from such attach by Article 31-A."**

The Apex Court has held in ***M/s. Prag Ice & Oil Mills and another etc. etc. v. Union of India, AIR 1978 SC 1296*** that the immunity enjoyed by the parent Act by reasons of its being placed in the Ninth Schedule cannot proprio vigore be extended to an offspring of the Act like a price control order issued under the authority of the Act. Their Lordships have held as under:-

> **"In practice, it is the exercise of power which is generally assailed and not the mere enforcement of it which raises somewhat different question of legislative competence. Indeed, the Ninth Schedule does not provide any protection at all against attacks based upon either the vice of excessive delegation or want of legislative competence defects which could be said to vitiate the grant of powers despite their place in the Ninth Schedule. But, questions of conflict with fundamental rights and of transgression of legitimate or reasonable limits upon their exercise arise when citizens complain of unreasonable impediments to the exercise of their fundamental rights. The distinction between protections to a mere grant of powers and to their exercise, therefore, seems specious in the context of the protection. It cannot explain why, if S. 3 is protected by the Ninth Schedule, the exercise of power granted by it, which manifests itself in control orders, is not protected. It would be so protected, if at all, not because of the Orders to be made in future, as such, are protected, but because the power actually conferred and found in existence in S. 3 is protected. The protection is given to a power which is specified and in existence which has to be used for certain purposes and not to what may be specified in future."**

It is thus clear that in view of the law laid down by the Hon'ble Supreme Court no immunity is attached to section 8-A of the Himachal Pradesh Village Common Lands Act, 1974 without the assent of the President of India. The main question to be gone into is on what grounds the vires of Section 8-A can be

challenged by the petitioners. The Hon'ble Supreme Court in the latest judgment in **I.R.Coelho (dead)by LRs. v. State of T.N**., (2007)2 SCC1 has held that it will be open to the citizens to challenge the vires of the Act on the ground that it is violative of the basic structure of the constitution as well as certain fundamental rights which have already been treated as part of the basic structure. In **I.R Coelho (dead) by LRs. vs. State of T.N.**, (1999) 7 SCC 580 their Lordships have observed that the inconsistencies in Waman Rao case should be reconciled and Bhim Singh case should also be taken into consideration by the larger Bench. Their Lordships have made the following observations at the time of referring the matter to the larger Bench:

> **The judgment of a Constitution Bench of this Court in Waman Rao v. Union of India, (1981) 2 SCR 1 : (AIR 1981 SC 271), dealt with Art. 31B. It referred to the judgment of this Court in the case of Kesavananda Bharti, 1973 Suppl SCR 1: (AIR 1973 SC 1461), decided on 24th April, 1973, wherei it was held by the majority "that Parliament has no power to amend the Constitution so as to damage or destroy its basic or essential features or its basic structure." The order in Waman Raoa's case was that all amendments to the Constitution which were made before 24th April, 1973 and by which the Ninth Schedule was amended from time to time by the inclusion of various Acts and Regulations therein, were valid and constitutional. Amendments to the Constitution made on or after 24th April, 1973 by which the Ninth Schedule was amended from time to time by the inclusion of various Acts and Regulations therein were "open to challenge on the ground that they, or any one or more of them are beyond the constituent power of the Parliament since they damage the basic and essential features of the Constitution or its basic structure. " The order in Waman Rao "did not pronounce upon the validity of such subsequent constitutional amendments except to say that if any Act or Regulation included in the Ninth Schedule by a constitutional amendment made after April 24, 1973 is saved by Art. 31A, or by Art. 31C as it stood prior to its amendment by the forty second amendment, the challenge to the validity of the relevant Constitutional Amendment by which that Act**

or Regulation is put in the Ninth Schedule on the ground that the amendment damages or destroys a basic or essential feature of the Constitution or its basic structure as reflected in Art. 14, 19 or 31, will become otiose." Chandrachud, C. J., in his judgment in Waman Rao, said that laws and regulations included in the Ninth Schedule prior to 24th April, 1973 "will not be open to challenge on the ground that they are inconsistent with or take away or abridge any of the rights conferred by any of the provisions of Part lll of the Constitution. Acts and Regulations which are or will be included in the Ninth Schedule on or after April 24, 1973 will not receive the protection of Art. 31B for the plain reason that in the face of the judgment in Kesavanand Bharti (supra) there was no justification for making additions to the Ninth Schedule with a view to conferring a blanket protection on the laws included therein. The various constitutional amendments by which additions were made to the Ninth Schedule on or after April 24, 1973 will be valid only if they do not damage or destroy the basic structure of the Constitution". Bhagwati, J. delivered a judgment that is common to Waman Rao, (AIR 1981 SC 271 and Minerva Mills Ltd. v. Union of India, (1981) 1 SCR 206 : (AIR 1980 SC 1789). He said that "all constitutional amendments made after the decision in Keshavannda Bharti's case (AIR 1973 SC 1461) would have to be tested by reference to the basic structure doctrine, for Parliament would then have no excuse for saying that it did not know the limitation on its amending powers." He added that "in every case where a constitutional amendment includes a statute or statutes in the Ninth Schedule, its constitutional validity would have to be considered by reference to the basic structure doctrine and such constitutional amendment would be liable to be declared invalid to the extent to which it damages or destroys the basic structure of the Constitution by according protection against violation of any particular fundamental right."

The judgment in Waman Rao, (AIR 1981 SC 271) needs to be considered by a larger Bench so that the apparent inconsistencies therein are reconciled and it is made clear whether an Act or Regulation which, or a part of which, is or has been found by this Court to be violative of one or more of the fundamental rights

conferred by Arts. 14, 19, and 31 can be included in the Ninth Schedule or whether it is only a constitutional amendment amending the Ninth Schedule that damages or destroys the basic structure of the Constitution that can be struck down.

The Constitution Bench that had decided Waman Rao, (AIR 1981 SC 271) also decided the case of Maharao Sahib Sri Bhim Singh Ji v. Union of India, 1985 Suppl (1) SCR 862 : (AIR 1985 SC 1650). The Urban Land (Ceiling and Regulation) Act, 1976 was the subject matter of the decision. It had been inserted into the Ninth Schedule by the Constitution (Fortieth Amendment) Act. Tulzapurkar, J. held the entire Act to be unconstitutional. The other four learned Judges agreed with him to the extent that a part of Section 27(1) of the Act was unconstitutional. Section 27(1) read thus :

"27 (1). Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions of sub-section (3) of Section 5 and sub-section (4) of Section 10, no person shall transfer by way of sale, mortgage, gift lease for a period exceeding ten years, or otherwise, any urban or urbanisable land with a building (whether constructed before or after the commencement of this Act) or a portion only of such building for a period of ten years of such commencement or from the date on which the building is constructed, whichever is later, except with the previous permission in writing of the competent authority."

Tulzapurkar, J., Krishna Iyer, J. and A.P. Sen, J. delivered separate judgments. Chandrachud, C.J., on behalf of himself and Bhagwati, J., stated that they would deliver a detailed judgment later, but, later, they passed an order stating that they had gone through the judgment of Krishna Iyer, J. and found that there was nothing that they could usefully add to it. Tulzapurkar, J. struck down Section 27(1) for the reason that it did not adequately control the arbitrary exercise of the power to grant or refuse the permission. The provision was found by him to be violative of Art. 14 and was, therefore, struck down as being ultra vires and unconditional. A.P. Sen, J. took the view that there was no justification for the freezing of transaction by way of sale, mortgage, gift or lease or vacant land

or building for a period exceeding ten years even though such land, with or without building thereon, fell within the ceiling limits. The right to acquire, hold and dispose of property guaranteed to a citizen under Art. 19(1)(f) carried with it the right not to hold any property. It was difficult to appreciate how a citizen could be compelled to own property against his will. If vacant land owned by a person fell within the ceiling limits for an urban agglormeration, he was outside the purview of the Act and could not be governed by any of the provisions of the Act. It was, therefore, held by the learned Judge that the provisions of Section 27(1) were invalid insofar as they sought to affect a citizen's right to dispose of his urban property in an urban agglomeration within the ceiling limits, Krishna Iyer, J. did not discuss the provisions of Section 27(1), but he agreed with the learned Chief Justice "regarding the partial invalidation of Section 27(1)." The learned Chief Justice had said in his brief earlier order that Section 27(1) was invalid insofar as it imposed a restriction on the transfer of any urban or urbanisable property within the ceiling area. Such property was transferable without the constraints mentioned in Section 27(1).

What is relevant is that whereas Tulzapurkar, J. and A.P. Sen, J. struck down Section 27(1), in part, for violation of the fundamental rights conferred by Arts. 14 and 19(1)(f) respectively, without more Krishna Iyer, J. said :

"What is a betrayal of the basic feature is not a mere violation of Art. 14 but a shcoking, unconscionable or unscrupulous travesty of the quintessence of equal justice. If a legislation does go that far it shakes the demostratic foundation and must suffer the death penalty."

The decision in Bhim Singh Ji case (AIR 1985 SC 1650) will also have to be considered by the larger Bench for the purposes of arriving at the conclusion aforementioned.

We deem it fit, accordingly, to refer these writ petitions and appeals for decision to a larger Bench preferably of nine learned Judges. The papers and proceedings shall be placed before the Hon'ble the Chief Justice of India for appropriate orders."

Pursuant to the judgment (1999) 7 SCC 580, the entire issue with regard to the extent of immunity provided by Article 31-B, extent of judicial review and doctrine of basic structure vis-a-vis Part-III of the Constitution of India was considered in detail by a Bench of nine Hon'ble Judges in (2007) 2 SCC-1 I.R. Coelho Vs. State of T.N.

The extent of immunity provided by Article 31-B has been dealt with by the Hon'ble Supreme Court in the following manner:

> **Next, we examine the extent of immunity that is provided by Article 31B. The principle that constitutional amendments which violate the basic structure doctrine are liable to be struck down will also apply to amendments made to add laws in the Ninth Schedule is the view expressed by Chief Justice Sikri. Substantially, similar separate opinions were expressed by Shelat, Grover, Hegde, Mukherjea and Reddy, JJ. In the four different opinions six learned judges came to substantially the same conclusion. These judges read an implied limitation on the power of the Parliament to amend the Constitution. Justice Khanna also opined that there was implied limitation in the shape of the basic structure doctrine that limits the power of Parliament to amend the Constitution but the learned Judge upheld 29th Amendment and did not say, like remaining six Judges, that the Twenty-Ninth Amendment will have to be examined by a smaller Constitution Bench to find out whether the said amendment violated the basic structure theory or not. This gave rise to the argument that fundamental rights chapter is not part of basic structure. Justice Khanna, however, does not so say in Kesavananda Bharati's case. Therefore, Kesavananda Bharati's case cannot be said to have held that fundamental rights chapter is not part of basic structure. Justice Khanna, while considering Twenty-Ninth amendment, had obviously in view the laws that had been placed in the Ninth Schedule by the said amendment related to the agrarian reforms. Justice Khanna did not want to elevate the right to property under Article 19(1)(f) to the level and status of basic structure or basic frame-work of the Constitution, that explains the ratio of Kesavananda Bharati's case. Further, doubt, if any, as to the opinion of Justice Khanna stood resolved on the clarification given in Indira Gandhi's case, by the learned Judge that**

in Kesavananda Bharati's case, he never held that fundamental rights are not a part of the basic structure or framework of the Constitution.

If the doctrine of basic structure provides a touchstone to test the amending power or its exercise, there can be no doubt and it has to be so accepted that Part III of the constitution has a key role to play in the application of the said doctrine.

Regarding the status and stature in respect of fundamental rights in Constitutional scheme, it is to be remembered that Fundamental Rights are those rights of citizens or those negative obligations of the State which do not permit encroachment on individual liberties. The State is to deny no one equality before the law. The object of the Fundamental Rights is to foster the social revolution by creating a society egalitarian to the extent that all citizens are to be equally free from coercion or restriction by the State. By enacting Fundamental Rights and Directive Principles which are negative and positive obligations of the States, the Constituent Assembly made it the responsibility of the Government to adopt a middle path between individual liberty and public good. Fundamental Rights and Directive Principles have to be balanced. That balance can be tilted in favour of the public good. The balance, however, cannot be overturned by completely overriding individual liberty. This balance is an essential feature of the Constitution.

Fundamental rights enshrined in Part III were added to the Constitution as a check on the State power, particularly the legislative power. Through Article 13, it is provided that the State cannot make any laws that are contrary to Part III. The framers of the Constitution have built a wall around certain parts of fundamental rights, which have to remain forever, limiting ability of majority to intrude upon them. That wall is the 'Basic Structure' doctrine. Under Article 32, which is also part of Part III, Supreme Court has been vested with the power to ensure compliance of Part III. The responsibility to judge the constitutionality of all laws is that of judiciary. Thus, when power under Article 31B is exercised, the legislations made completely immune from Part III results in a direct way out, of the check of Part III, including that of Article 32. It cannot be said that the same Constitution that provides for a check

on legislative power, will decide whether such a check is necessary or not. It would be a negation of the Constitution. In Waman Rao's case, while discussing the application of basic structure doctrine to the first amendment, it was observed that the measure of the permissibility of an amendment of a pleading is how far it is consistent with the original; you cannot by an amendment transform the original into opposite of what it is. For that purpose, a comparison is undertaken to match the amendment with the original. Such a comparison can yield fruitful results even in the rarefied sphere of constitutional law.

It is also contended for the respondents that Article 31A excludes judicial review of certain laws from the applications of Articles 14 and 19 and that Article 31A has been held to be not violative of the basic structure. The contention, therefore, is that exclusion of judicial review would not make the Ninth Schedule law invalid. We are not holding such law per se invalid but, examining the extent of the power which the Legislature will come to possess. Article 31A does not exclude uncatalogued number of laws from challenge on the basis of Part III. It provides for a standard by which laws stand excluded from Judicial Review. Likewise, Article 31C applies as a yardstick the criteria of sub-clauses (b) and (c) of Article 39 which refers to equitable distribution of resources.

The Parliament has power to amend the provisions of Part III so as to abridge or take away fundamental rights, but that power is subject to the limitation of basic structure doctrine. Whether the impact of such amendment results in violation of basic structure has to be examined with reference to each individual case. Take the example of freedom of Press which, though not separately and specifically guaranteed, has been read as part of Article 19(1)(a). If Article 19(1)(a) is sought to be amended so as to abrogate such right (which we hope will never be done), the acceptance of respondents contention would mean that such amendment would fall outside the judicial scrutiny when the law curtailing these rights is placed in the Ninth Schedule as a result of immunity granted by Article 31B. The impact of such an amendment shall have to be tested on the touchstone of rights and freedoms guaranteed by Part III of the Constitution. In a given case, even abridgement may destroy the real freedom of the Press and, thus, destructive of the

basic structure. Take another example. The secular character of our Constitution is a matter of conclusion to be drawn from various Articles conferring fundamental rights; and if the secular character is not to be found in Part III, it cannot be found anywhere else in the Constitution because every fundamental right in Part III stands either for a principle or a matter of detail. Therefore, one has to take a synoptic view of the various Articles in Part III while judging the impact of the laws incorporated in the Ninth Schedule on the Articles in Part III. It is not necessary to multiply the illustrations.

After enunciation of the basic structure doctrine, full judicial review is an integral part of the constitutional scheme. Justice Khanna in Kesavananda Bharati's case was considering the right to property and it is in that context it was said that no Article of the Constitution is immune from the amendatory process. We may recall what Justice Khanna said while dealing with the words "amendment of the Constitution". His Lordship said that these words with all the wide sweep and amplitude cannot have the effect of destroying or abrogating the basic structure or framework of the Constitution. The opinion of Justice Khanna in Indira Gandhi clearly indicates that the view in Kesavananda Bharati's case is that at least some fundamental rights do form part of basic structure of the Constitution. Detailed discussion in Kesavananda Bharati's case to demonstrate that the right to property was not part of basic structure of the Constitution by itself shows that some of the fundamental rights are part of the basic structure of the Constitution. The placement of a right in the scheme of the Constitution, the impact of the offending law on that right, the effect of the exclusion of that right from judicial review, the abrogation of the principle on the essence of that right is an exercise which cannot be denied on the basis of fictional immunity under Article 31-B.

The extent of judicial review has been dealt with by the larger Bench in the following manner:

“We are considering the question as to the extent of judicial review permissible in respect of Ninth Schedule laws in the light of the basic structure theory propounded in Kesavananda Bharati's

case. In this connection, it is necessary to examine the nature of the constituent power exercised in amending a Constitution.

Realising that it is necessary to secure the enforcement of the Fundamental Rights, power for such enforcement has been vested by the Constitution in the Supreme Court and the High Courts. Judicial Review is an essential feature of the Constitution. It gives practical content to the objectives of the Constitution embodied in Part III and other parts of the Constitution. It may be noted that the mere fact that equality which is a part of the basic structure can be excluded for a limited purpose, to protect certain kinds of laws, does not prevent it from being part of the basic structure. Therefore, it follows that in considering whether any particular feature of the Constitution is part of the basic structure - rule of law, separation of power - the fact that limited exceptions are made for limited purposes, to protect certain kind of laws, does not mean that it is not part of the basic structure.

Every amendment to the Constitution whether it be in the form of amendment of any Article or amendment by insertion of an Act in the Ninth Schedule has to be tested by reference to the doctrine of basic structure which includes reference to Article 21 read with Article 14, Article 15 etc. As stated, laws included in the Ninth Schedule do not become part of the Constitution, they derive their validity on account of the exercise undertaken by the Parliament to include them in the Ninth Schedule. That exercise has to be tested every time it is undertaken. In respect of that exercise the principle of compatibility will come in. One has to see the effect of the impugned law on one hand and the exclusion of Part III in its entirety at the will of the Parliament.

In Waman Rao, it was accordingly rightly held that the Acts inserted in the Ninth Schedule after 24th April, 1973 would not receive the full protection.

The doctrine of basic structure as propounded in ***Kesavananda Bharati*** case has been further expounded:

Article 31-B gives validation based on fictional immunity. In judging the validity of constitutional amendment we have to be guided by the impact test. The basic structure doctrine requires the State to

justify the degree of invasion of fundamental rights. Parliament is presumed to legislate compatibly with the fundamental rights and this is where Judicial Review comes in. The greater the invasion into essential freedoms, greater is the need for justification and determination by court whether invasion was necessary and if so to what extent. The degree of invasion is for the Court to decide. Compatibility is one of the species of Judicial Review which is premised on compatibility with rights regarded as fundamental. The power to grant immunity, at will, on fictional basis, without full judicial review, will nullify the entire basic structure doctrine. The golden triangle referred to above is the basic feature of the Constitution as it stands for equality and rule of law.

The larger Bench had drawn the following conclusions after taking into consideration the entire gamut with regard to extent of immunity provided by Article 31-B.

The broader contours of the judicial review and doctrine of basic structure:

(i) A law that abrogates or abridges rights guaranteed by Part III of the Constitution may violate the basic structure doctrine or it may not. If former is the consequence of law, whether by amendment of any Article of Part III or by an insertion in the Ninth Schedule, such law will have to be invalidated in exercise of judicial review power of the Court. The validity or invalidity would be tested on the principles laid down in this judgment.

(ii) The majority judgment in Kesavananda Bharati's case read with Indira Gandhi's case, requires the validity of each new constitutional amendment to be judged on its own merits. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account for determining whether or not it destroys basic structure. The impact test would determine the validity of the challenge.

(iii) All amendments to the Constitution made on or after 24th April, 1973 by which the Ninth Schedule is amended by inclusion of various laws therein shall have to be tested on the touchstone of the basic or essential features of the Constitution as reflected in

Article 21 read with Article 14, Article 19, and the principles underlying them. To put it differently even though an Act is put in the Ninth Schedule by a constitutional amendment, its provisions would be open to attack on the ground that they destroy or damage the basic structure if the fundamental right or rights taken away or abrogated pertains or pertain to the basic structure.

(iv) Justification for conferring protection, not blanket protection, on the laws included in the Ninth Schedule by Constitutional Amendments shall be a matter of Constitutional adjudication by examining the nature and extent of infraction of a Fundamental Right by a statute, sought to be Constitutionally protected, and on the touchstone of the basic structure doctrine as reflected in Article 21 read with Article 14 and Article 19 by application of the "rights test" and the "essence of the right" test taking the synoptic view of the Articles in Part III as held in Indira Gandhi's case. Applying the above tests to the Ninth Schedule laws, if the infraction affects the basic structure then such a law(s) will not get the protection of the Ninth Schedule.

This is our answer to the question referred to us vide Order dated 14th September, 1999 in I.R. Coelho v. State of Tamil Nadu [(1999) 7 SCC 580].

(v) If the validity of any Ninth Schedule law has already been upheld by this Court, it would not be open to challenge such law again on the principles declared by this judgment. However, if a law held to be violative of any rights in Part III is subsequently incorporated in the Ninth Schedule after 24th April, 1973, such a violation/infraction shall be open to challenge on the ground that it destroys or damages the basic structure as indicated in Article 21 read with Article14, Article 19 and the principles underlying thereunder.

(vi) Action taken and transactions finalized as a result of the impugned Acts shall not be open to challenge.

The amendment carried out on the basis of Act No.18 of 1981 whereby section 8-A has been inserted will not enjoy any immunity as enjoyed by the Principal Act being included in Schedule –IX of the Constitution of India. Section 8-A could only enjoy immunity under Schedule-IX if the same had been placed by

way of amendment carried out in the Constitution as per Article 368 of the Constitution of India in the IXth Schedule. The vires of section 8-A can be challenged by the petitioners under Articles 14 and 19 of the Constitution of India since section 8-A does not enjoy the protection under Article 31-A of the Constitution of India. The utilization of the land for the development has been given restrictive meaning by this Court to bring it in tune with the agrarian reform.

8. Whether section 8-A could be inserted in the year 1981 in the Principal Act by invoking section 14 of the Act?

Could section 8-A be incorporated in the H.P. Village Common Lands Vesting and Utilization Act, 1974 on the strength of section 14 of the Principal Act? We have already held that the H.P. Village Common Lands Vesting and Utilization Act, 1974 is an agrarian piece of legislation. The Statement of Objects and Reasons for bringing out the Act No.18 of 1981 is that the land vested under section 3 of the Act, also comprises of such land which was not suitable for either of the purposes mentioned in section 8 of the Act, can profitably be utilized for the development of industrial and tourism purposes. Section 14 of the H.P. Village Common Lands Vesting and Utilization Act, 1974 reads thus:

> **"Power to remove difficulties.- If any difficulty arises in giving effect to the provisions of this Act, the State Government, may, by order published in the Official Gazette, make such provisions or give such directions not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for the removal of the difficulty."**

The contention of the learned Advocate General is that the amendment has been carried out by way of Act No. 18 of 1981 under section 14 the Principal Act. We do not subscribe to the submission made by the learned Advocate General in view of the law laid down by their Lordships in following cases:

Their Lordships of the Hon'ble Supreme Court have succinctly explained the principles for invoking the removal of difficulty clause in ***M/s Jalan Trading Company versus Mill Mazdoor Sabha***, AIR 1967 SC 691. Their Lordships of the Hon'ble Supreme have held that sub section (2) of section 37 purports to make the order of the Central Government in such cases final accentuates the vice in sub section (1) since by enacting that provision the Government is made the sole judge whether difficulty or doubt had arisen in giving effect to the provisions of the Act, whether it is necessary or expedient to remove the doubt or difficulty, and whether the provision enacted is not inconsistent with the purposes of the Act. Their Lordships have held as under:

> **"But S. 37 which authorizes the Central Government to provide by order for removal of doubts or difficulties in giving effect to the provisions of the Act, in our judgment, delegates legislative power which is not permissible. Condition of the applicability of S. 37 is the arising of the doubt or difficulty in giving effect to the provisions of the Act. By providing that the order made must not be consistent with the purposes of the Act, S. 37 is not saved from the vice of delegation of legislative authority. The section authorizes the Government to determine for itself what the purposes of the Act are and to make provisions for removal of doubts or difficulties. If in giving effect to the provisions of the Act any doubt or difficulty arises, normally it is for the Legislature to remove that doubt or difficulty. Power to remove the doubt or difficulty by altering the provisions of the Act would in substance amount to exercise of legislative authority and that cannot be delegated to an executive authority. Sub section (2) of section 37 purports to make the order of the Central Government in such cases final accentuates the vice in sub section (1) since by enacting that provision the Government is made the sole judge whether difficulty or doubt had arisen in giving effect to the provisions of the Act, whether it is necessary or expedient to remove the doubt or difficulty, and whether the provision enacted is not inconsistent with the purposes of the Act."**

The Hon'ble Supreme Court has held in ***Straw Products Limited versus Income Tax Officer, Bhopal,*** AIR 1968 SC 579 that the section did not make the arising of the difficulty a matter of subjective satisfaction of the Government. It is a condition precedent to the exercise of the power and existence of the condition if challenged must be established as an objective fact. Their Lordships have held as under:

> **"But the impugned order seeks to alter the connotation of that expression. The assessee contends that no difficulty arose or could arise in giving effect to the provisions relating to the allowance of depreciation under the Indian Income-tax Act to the merged States after the promulgation of the Taxation Laws (Merged States) Removal of Difficulties) Order, 1949, and the Central Government assumed, in issuing the impugned Order under Section 6 of Act 67 of 1949, powers which were not invested by the Act and on that account the Order is invalid. The Union of India resists that plea. The High Court of Madhya Pradesh held that the Central Government having issued the 1962 Order, it must be deemed to be held that difficulties had arisen in giving effect to the provisions of Act 67 of 1949 and the opinion of the Central Government in that behalf was conclusive. The Court observed:**
>
> > **"The language of the section clearly shows that it is for the Central Government to decide, as a pure act of administration, whether an obstacle or impediment exists in giving effect to the provisions of the Act, Rule or Order referred to in Section 6 which calls for an order for surmounting the obstacle or removing the impediment. No doubt Section 6 does not expressly say that the Central Government should be satisfied as to the "existence of the difficulty" for the removal of which the making of an Order is necessary. But it is implicit in the language of section 6 that the Central Government should be satisfied that a difficult exists in giving effect to the provisions of any Act, Rule or Order**

> **extended by Section 3 to the Merged States. If the existence of any "difficulty" dependents on the satisfaction of the Central Government, then it follows that the condition about the existence of any difficulty, for the removal of which the Central Government is empowered to make an Order, is a subjective condition incapable of being determined by any one other than the Central Government which has to take action in the matter."**
>
> **In so observing, in our judgment, the High Court plainly erred. Exercise of the power to make provisions or to issue directions as may appear necessary to the Central Government is conditioned by the existence of a difficulty arising in giving effect to the provisions of any Act, rule or order. The section did not make the arising of the difficulty a matter of subjective satisfaction of the Government. It is the condition precedent to the exercise of the power and existence of the condition if challenged must be established as an objective fact."**

Similarly, the Hon'ble Supreme Court has explained the removal of difficulty clause, the nature and necessity in ***Madeva Upendra Sinai and others versus Union of India***, (1975) 3 SCC 765 in the following manner:

> **"To keep pace with the rapidly increasing responsibilities of a welfare democratic State, the Legislature has to turn out a plethora of hurried legislation, the volume of which is often matched with its complexity. Under conditions of extreme pressue, with heavy demands on the time of the Legislature and the endurance and skill of the draftsman, it is well night impossible to foresee all the circumstances to deal with which a statute is enacted or to anticipate all the difficulties that might arise in its working due to peculiar local conditions or even a local law. This is particularly true when Parliament undertakes legislation which gives a new dimension to socio-economic activities of the State or extends the existing Indian laws to new territories or areas freshly merged in the Union of India. In order to obviate the**

> **necessity of approaching the Legislature for removal of every difficulty, howsoever trivial, encountered in the enforcement of a statute, by going through the time-consuming amendatory process, the Legislature sometimes thinks it expedient to invest the Executive with a very limited power to make minor adaptations and peripheral adjustments in the statute, for making its implementation effective, without touching its substance. That is why the "removal of difficulty clause", once frowned upon and nick-named as "Henry VIII clause" in scornful commemoration of the absolutist ways in which that English King got the "difficulties" in enforcing his autocratic will removed through the instrumentalities of a servile Parliament, now finds acceptance as a practical necessity, in several India statutes of post independence era."**

In view of the law laid down by the Hon'ble Supreme Court and after reading all the sections of the Principal Act harmoniously, we are of the firm view that there was no difficulty in giving effect to the Principal Act. The decision was required to be taken objectively and not blurtly. The difficulty must arise in giving the effect to the provisions of the Parent Act and not difficulty arising aliunde, or an extraneous difficulty.

Constitutional Law –duty of the Courts

The Hon'ble Supreme Court has held in ***K.M. Kunhahammad etc versus State of Kerala and others***, AIR 1978 SC 771 that the judicial approach should be dynamic rather than static pragmatic and not pedantic and elastic rather than rigid. Their Lordships have held as under

> **"Before however taking up the other two points raised by counsel for the appellants which were pressed before us in this Court it may be necessary to set out the approach which a Court has to make and the principles by which it has to be guided in such matters. Courts interpret the constitutional provisions against the social setting of the country so as to show a complete consciousness and deep awareness of the growing requirements of the society, the increasing needs of the nation, the burning problems of the day and**

the complex issues facing the people which the legislature in its wisdom, through beneficial legislation seeks to solve. The judicial approach should be dynamic rather than static pragmatic and not pedantic and elastic rather than rigid. It must take into consideration the changing trends of economic though, the temper of the times and the living aspirations and feelings of the people. This Court while acting as a sentinel on the qui vive to protect fundamental rights guaranteed to the citizens of the country must try to strike a just balance between the fundamental rights and the larger and broader interests of society, so that when such a right clashes with the larger interest of the country it must yield to the latter. Emphasizing the rule of Courts in such matters this Court in the case of Jyoti Pershad v. Administrator for the Union Territory of Delhi, (1962) 2 SCR 125 at p. 148: (AIR 1961 SC 1602 at p. 1613) observed as follows:

> **"Where the legislature fulfils its purpose and enacts laws, which in its wisdom, is considered necessary for the solution of what after all is a very human problem the tests of "reasonableness" have to be viewed in the context of the issues which faced the legislature. In the construction of such laws and particularly in judging of their validity the Courts have necessarily to approach it from the point of view of furthering the social interest which it is the purpose of the legislation to promote, for the Courts are not, in these matters, functioning as it were in vacuo, but as parts of a society which is trying by enacted law, to solve its problems and achieve a social concord and peaceful adjustment and thus furthering the moral and material progress of the community as a whole."**

Their Lordships of the Hon'ble Supreme Court in ***Lingappa Pochanna Appealwar versus State of Maharashtra and another***, AIR 1985 SC 389 have held that law should be used as an instrument of distributive justice to achieve a fair division of wealth among the members of society based upon the principle: 'from each according to his capacity, to each according to his needs'. Their Lordships have held as under:

"The present legislation is a typical illustration of the concept of distributive justice, as modern jurisprudents know it. Legislators, Judges and administrators are now familiar with the concept of distributive justice. Our Constitution permits and even directs the State to administer what may be termed 'distributive justice'. The concept of distributive justice in the sphere of law making connotes, inter alia, the removal of economic inequalities and rectifying the injustice resulting from dealings or transactions between unequal in society. Law should be used as an instrument of distributive justice to achieve a fair division of wealth among the members of society based upon the principle: 'From each according to his capacity, to each according to his needs." Distributive justice comprehends more than achieving lessening of inequalities by differential taxation, giving debt relief or distribution of property owned by one to many who have none by imposing ceiling on holdings, both agricultural and urban, or by direct regulation of contractual transactions by forbidding certain transactions and perhaps, by requiring others. It also means that those who have been deprived of their properties by unconscionable bargaining should be restored their property. All such laws may take the form of forced redistribution of wealth as a means of achieving a fair division of material resources among the members of society or there may be legislative control of unfair agreements."

The concept of social justice has been elucidated by the Madras High Court in ***Sridharan Motor Service, Attur versus Industrial Tribunal, Madras***, (1969) 1 LLJ 380 as under:

"Concepts of social justice have varied with age and clime. What would have appeared to be indubitable social justice to a Norman or Saxon in the days of William the Conqueror will not be recognized as such in England today. What may appear to be incontrovertible social justice to a resident of Quebee may wear a different aspect to a resident of Peking. If it could be possible for Confucius, Manu, Hammurabi and Solomon to meet together at a conference table I doubt whether they would be able to evolve agreed formulae as to what constitutes social justice, which is a very controversial field. Courts and tribunals created by the law must guide themselves by the directions and pri9nci0les embodied in the law. If the law declares that a line or course of conduct is illegal they must give effect to that declaration. In countries with democratic forms of Government public opinion and the law act and react on each other.

Sometimes the law sets the pace and public opinion catches up with the law. In other cases where the law lags behind public opinion the pressure of the opinion brings about a change in the law."

A poetic testament to the crusade for justice can be summed up in a few lines of live poetry as under:

Bowed by the weight of centuries he leans
Upon his hoe and gazes on the ground,
The emptiness of ages on his face,
And on his back the burden of the world.

(Man with the Hoe)

The submission made by Mr. Deepak Kaushal, Advocate on the basis of the Mines and Minerals (Development and Regulation) Act, 1957 being placed at Sr. No.19 of the IX Schedule has no bearing directly or indirectly on the lis being decided by us. The core issue requiring adjudication by us is whether section 8-A incorporated by Act No.18 of 1981 is ultra vires the constitution being violative of the rights enshrined in Part-II of the Constitution of India, more particularly, in view of the fact that amendment has been carried out by way of Act No. 18 of 1981 in an agrarian piece of legislation. The lease has been granted to respondent No.3 from the land which has become available to the State under section 3 of the Principal Act for minding purposes which according to us could not be leased out to him being in direct conflict with the Principal Act as well as the meaning which we have assigned to the word 'development'.

The upshot of the above discussion is that:

1. **The petitioners have the necessary locus standi to file and maintain the present petition on their behalf and on behalf of the co-villagers, seeking return of their land after the insertion of clause (d) in sub-section (2) of Section 3 of the Himachal Pradesh Village Common Lands Vesting and Utilization, Act, 1974;**
2. **The petition has the basic ingredients of being termed as "public interest litigation" akin to social and class action;**

3. **There is neither any delay nor negligence on the part of the petitioners to approach this Court for challenging the vires of Section 8-A of the Himachal Pradesh Village Common Lands Vesting and Utilization, Act, 1974;**
4. **Neither the petitioners nor respondents No.4 to 329 can waive or barter away their fundamental rights and legal rights available to them as per the provisions of the Himachal Pradesh Village Common Lands Vesting and Utilization, Act, 1974;**
5. **The effect of the amendment carried out by way of the H.P. Village Common Lands Vesting and Utilization (Amendment) Act, 2001 in the Principal Act is that it has to be treated as integral part of the Principal Act from the very inception of the Act i.e. 1974;**
6. **The Himachal Pradesh Village Common Lands Vesting and Utilization, Act, 1974 is an agrarian piece of legislation;**
7. **Section 8-A though unconstitutional being violative of Articles 14 and 19 of the Constitution of India is not struck down by invoking the principle of reading down by giving the word development restrictive meaning instead of extensive meaning;**
8. **The petitioners and other co villagers are entitled to get back their land;**
9. **The immunity enjoyed by the Principal Act cannot be extended to Section 8-A;**
10. **Section 14 of the Himachal Pradesh Village Common Lands Vesting and Utilization, Act, 1974 could not be invoked by the State for adding Section 8-A**

Consequently, the writ petition is allowed. Annexure P-5 dated 20th March, 2001 is quashed and set aside. The expression utilization of the land for developmental activities mentioned in section 8-A is read down and explained to mean those developmental activities which are akin to the agricultural pursuits read with the expression 'common purposes' defined in the Act and not the mining activities to save it from being declared unconstitutional. Respondents No.1 and 2 are directed to restore the land to the petitioners and other co-villagers measuring 1338.03 bighas, including the land leased out to respondent No.3, except the land which has been allotted to the landless persons, eligible persons and for any common purposes as defined strictly in the Himachal Pradesh Village Common

Lands Vesting and Utilization Act, 1974, within a period of eight weeks from today. The respondent No.2 is directed to carry out the mutation in favour of the petitioners and co-villagers within further period of four weeks. The mining operations being carried out by respondent No.3 will cease forthwith. Respondent No.2 is held responsible to enforce and implement these directions issued qua respondent No.3. The petitioners are also held entitled to costs, which are quantified at Rs.25,000/-.

Finis:

We appreciate the assistance rendered by the learned Advocates appearing on behalf of the parties.

(V.K. Gupta), C.J.

November 22, 2007 (sck) **(Rajiv Sharma), J.**